Official Gazette

REPUBLIC OF THE PHILIPPINES

EDITED AT THE OFFICE OF THE PRESIDENT, UNDER COMMONWEALTH ACT NO. 638
ENTERED AS SECOND-CLASS MATTER, MANILA POST OFFICE, DECEMBER 26, 1905

Vol. 55 MANILA, PHILIPPINES, JANUARY 26, 1959 No. 4

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OFFICIAL WEEK IN REVIEW

January 18.—PRESIDENT Garcia got a rousing welcome today from the people of Cagayan Valley upon his arrival in Tuguegarao, Cagayan, this morning on an inspection trip.

This is the Chief Executive's first visit there since the 1957 elections.

The President is on an inspection trip of the second district of Cagayan where he will inaugurate the ₱8,000 Solana municipal building, and break the ground for the proposed ₱250,000 Rizal–Lasam–Allacapan highway.

On hand at Tuguegarao airport to meet the Chief Executive were Gov. Marcelo Adduru, Rep. Benjamin Ligot, Tuguegarao Mayor Mateo Natividad, Brig. Gen. Oscar Rialp, 1st MA commanding general, national provincial, and municipal officials of the province, and friends and symphatizers of President Garcia in Cagayan.

With the presidential party were Senate Majority Floor Leader Cipriano Primicias, Sr., Sens. Eulogio Balao and Quintin Paredes, and Speaker Protempore Constancio Castañeda.

At the reception ceremonies President Garcia received from Mayor Natividad the symbolic key to Tuguegarao and was accorded full military honors by a unit of the Constabulary troops in the province.

The presidential plane landed 40 minutes behind schedule because of overcast above Tuguegarao. Pilots of three PAF planes had difficulty in finding a break in the clouds in order to land.

After the ceremonies at the airport the President led a motorcade to the Tuguegarao cathedral, where *Te Deum* was sung by Bishop Teodulfo Domingo.

All along the route, from the airport to the cathedral, the streets were lined by ROTC and PMT cadets and school children waving paper flags and cheering the President as he passed.

From the cathedral the motorcade proceeded to Solana for the inauguration of the municipal building, and crossed the wide Cagayan River on board a ferry.

The President cut the ceremonial ribbon assisted by Mrs. Pilar Caronan, wife of Solana Mayor Justo Cesar Caronan.

After the ribbon cutting ceremony, the building was blessed by Rev. Felicisimo Herrera.

In a brief speech following the inauguration, the President promised the people of Solana that the bridge spanning the Cagayan River, will be given top priority as soon as the loan from the U.S. Development Loan Fund is received, amounting to ₱50 million.

From Solana, the presidential party motored to Cagayan Valley Agricultural School for lunch. After a brief rest at Piat, the President visited the miraculous image of *Nuestra Señora de Piat* in the town church.

The President later continued the trip to Rizal town, 70 kilometers from Tuguegarao, for the ground-breaking ceremony of the Rizal–Lasam–Allacapan highway.

After addressing a public meeting in Rizal town, President Garcia returned to Tuguegarao arriving at about 8:50 p.m.

In a mammoth rally at the Arranz Memorial Stadium later in the evening, the Chief Executive thanked the people of Cagayan Valley for supporting his administration's drive for increase food production.

After breakfast early tomorrow morning with national, provincial, and municipal officials, the President and party will return by plane to Manila.

January 19.—PRESIDENT Garcia woke up early this morning despite the heavy schedule of activities yesterday which was capped by a back-breaking 140-kilometer roundtrip over rough roads for the ground-breaking ceremony of a proposed ₱250,000 road connecting the remote towns of Rizal, Lasam, and Allacapan, and opening vast tracts of virgin lands in the Cagayan Valley.

During yesterday's overland journey from Tuguegarao to Rizal, Cagayan, the Chief Executive inaugurated a recently-completed ₱8,000 municipal building in the town of Solana, mode a pilgrimage to the shrine of the miraculous image of Our Lady of Piat, and crossed three rivers by ferry.

The President was warmly received in all the towns he visited. Barefoot farmers and members of their families lined the presidential route and cheered him as he passed. They thanked him for having taken the trouble of visiting their God-forsaken localities and personally looking into their problems. The rural folks said it was the first time a President of the Philippines had ever set foot on those parts.

After hearing mass at the Tuguegarao cathedral this morning, the President went to the residence of Cagayan Gov. Marcelo Adduru, where he and members of his party were honored at breakfast.

Before going to the airport, President Garcia made an unscheduled sidetrip to the St. Paul's College in Tuguegarao, where he talked informally before students, members of the faculty, and townspeople who flocked to the school upon learning of his presence there.

A huge crowd followed the presidential motorcade to the airport where full military honors were accorded to the Chief Executive before he boarded the PAF C-47 *Quezon* on the return trip to Manila.

The plane took off from the Tuguegarao airport at 10:40 a.m. and landed at the PAF Base Operations in Nichols Field shortly after 12 noon.

From Nichols Field, President Garcia proceeded to Malacañang.

Upon his arrival in Manila, the President, though a little disappointed from the defeat and elimination of the Philippine team in the world basketball championship series in Chile, addressed a cable to Sen. Ambrosio Padilla, head of the PI team, and congratulated him and the players for their splendid showing.

Later in the evening, the President conferred with Press Secretary Jose C. Nable and other advisers to discuss the final draft of his state-of-the-nation message which he will deliver before Congress on January 26.

January 20.—AT a breakfast conference this morning, President Garcia was assured by House leaders of a bi-partisan support for the proposed constitutional amendments, particularly the synchronization of elections.

The President was informed at the conference held this morning in his Quezon City residence with members of the Council of Leaders of a favorable reaction in the House of Representatives for all proposed constitutional amendments.

Liberal members of the House have openly come out in favor of the proposed constitutional amendments, according to House officers.

They recalled that Rep. Ferdinand Marcos of Ilocos Norte, House minority floor leader, said the other day that the opposition party stood in favor of (1) synchronizing elections, (2) creating senatorial districts, and (3) creating a more powerful and independent general auditing office.

During the meeting which lasted from 8:30 a.m. to 1 p.m., the President was further informed that the sentiment in the Senate for constitutional amendments was not yet clearly defined.

Present at the conference were Senate President Eulogio Rodriguez, Sr., Speaker Daniel Z. Romualdez, Senate President Protempore Fernando Lopez, Speaker Protempore Constancio Castañeda, and Senate Majority Floor Leader Cipriano Primicias, Sr.

Congressional leaders also reiterated their support to the proposal of President Garcia to create a graft court.

THE President today branded as absolutely baseless a news item that appeared in a metropolitan paper to the effect that Commissioner of Immigration Emilio Galang will be relieved of his position.

The Chief Executive stated that since 1957 he had not seen Mr. Julio de la Cruz, son of former Immigration Commissioner Vicente de la Cruz of Leyte who allegedly would replace Galang.

The story about the relief of Galang broke into print when De la Cruz himself reportedly announced to a reporter his designation as immigration commissioner before holding a conference with Galang at the immigration office.

THE President this day ordered the Presidential Committee on Administration Performance Efficiency to investigate and institute the necessary court action against one Medrino M. Cruz, who had reportedly been advertising himself as promoter and chairman of an amusement group for a double stage show program supposedly under the sponsorship of Mrs. Leonila D. Garcia and tabbed as a "Malacañang Benefit."

In a memorandum sent this evening to the PCAPE, Executive Secretary Juan C. Pajo disclosed that he had been informed by both the President and the First Lady that they had not given any authority to Cruz to stage the benefit which has been advertised to be held on January 27 for indigent children.

Posters being circulated to advertise the supposed benefit show include an executive committee composed of Secretary Pajo as honorary chairman, Cruz himself as promoter and chairman of the amusement group, Mrs. Constancia C. Tolentino as chairman on invitations of a women's group, Genaro Visarra as chairman on invitations of government officials, Labor Secretary Angel Castaño as chairman on invitations for officials of government and private corporations, and Press Secretary Jose C. Nable as chairman on press and radio.

Press Secretary Nable had previously issued an announcement denying participation in the promotion of the supposed benefit show. In his announcement, Nable also recalled that Secretary Pajo had issued a similar denial. Secretary Nable said that his signature on a resolution to promote the show had been obtained on false representation, believing it really had the authorization of the First Lady for the Malacañang Children's Christmas Festival.

Assistant Executive Secretary Mariano R. Logarta today wrote Cruz informing him that the latter's request for endorsement of the benefit had been disapproved by the First Lady. Logarta also transmitted the desire of Mrs. Garcia that Cruz desisted from continuing with the unauthorized use of her name and the Malacañang Christmas Festival committee for Cruz' own personal purpose.

"Your unauthorized use of a facsimile of the Malacañang committee stationary wherein your name appears as promoter and chairman of the amusement group is highly misleading and irregular considering the fact that you have not been appointed as such by the committee, much less by the First Lady," Secretary Logarta said in his letter to Cruz. "You know fully well that you have never been connected with the Malacañang committee by virtue of any appointment nor authority from any member of the committee to act in their behalf," he added.

PRESIDENT Garcia called officers of the Philippine Air Lines Employees Association (PALEA) and representatives of management to a conference this afternoon in his residence in Quezon City to avert an imminent strike threatening the company.

Spokesman for the union was Roberto Oca, president of the Philippine Transport Workers Organization (PTWO), parent organization of (PALEA), while the management of PAL was represented by Daniel Me. Gomez, PAL executive vice-president, and Leonardo Siguion Reyna, PAL legal counsel.

The President expressed his desire to both parties that they thresh out their differences over a conference table and hoped that they would reach

an agreement in order not to interrupt the service to the detriment of the riding public.

The Chief Executive assured Oca that labor would be given a proportionate share of the profits of PAL but at the same time requested the union to take into account that the air line would soon resume its international flights.

This fact, President Garcia said, will necessarily mean additional expenses since PAL will have to keep up with the latest developments in aviation.

Officers of the PALEA who attended the conference were Emilio F. Sanio, president; Miguel Blando, vice-president; Isidro Chavez, treasurer; Gregorio Cagilonia, secretary; and Pedro Nazareno, Prospero Miciano, Agustin Buco, and Ben Garcia, directors.

Jose Espinas, legal counsel of the PTWO, was also present.

January 21.—PRESIDENT Garcia this day separated from the service Dr. Cristobal Santiago, member of the Board of Directors of the National Waterworks and Sewerage Authority, for having utilized government time, labor, and equipment in the repair and cleaning of the artesian well of his father-in-law in Suklain, Arayat, Pampanga.

In pursuing his house-cleaning job, President Garcia said that "this is a clear case of an official taking advantage of his position for private ends."

An administrative order signed at a conference with Assistant Executive Secretary Sofronio C. Quimson also provides that the resignation of Dr. Santiago is without prejudice to the collection from him of the money value of the government labor and equipment utilized in the repairs and cleaning of the well of his father-in-law.

The President also signed another administrative order exonerating fiscal Gregorio S. de la Peña of Basilan City from several administrative charges, as recommended by Justice Secretary Jesus Barrera.

The President also signed the following appointments: Fidencio S. Raz, first assistant provincial fiscal of Capiz; Vicente Abalagon, second assistant provincial fiscal of Capiz; Roberto Madrid, assistant provincial fiscal of Iloilo; Luis Lagdameo, chairman of the Board of Assessment Appeals of Quezon Province; and Ciceron Guerrero, Demetrio C. Castillo, Regino Aro, and Diosdado Amado, members of the said board.

Earlier, President and Mrs. Garcia motored to the St. Francis Church near the provincial capitol of Pasig, Rizal, to hear mass said on the occasion of the birthday of Senate President Rodriguez.

After the mass, President and Mrs. Garcia gave the Senate head a birthday gift and then proceeded to the provincial capitol for breakfast. Then they returned to their Quezon City residence.

In the afternoon, the President presided over the regular weekly meeting of his Cabinet.

THE CABINET approved this evening the establishment of a $22 million petroleum refinery to be set up by the Philippine Investments and Management Association. The Cabinet decision was spurred by a resolution of the National Economic Council recommending approval of the plan.

At the Cabinet meeting, the President also:

1. Ordered the Department of Agriculture and Natural Resources to send men to look into reports of locust infestation in Panada and Malalag, Davao; and

2. Directed the Reparations Commission to allocate ₱9,540,873.66 from the special economic development fund (50 per cent) to the Development Bank of the Philippines and ₱2.5 million to prefabricated houses fund, ₱1 million to the rural banks, and ₱1.2 million to the Land Tenure Administration for the other 50 per cent.

The refinery is expected to produce from 10,000 to 17,000 barrels of kerosene a day.

The Cabinet, however, deferred action on the plan to float ₱100,000,000 worth of bond issues to finance the purchase of 12 ocean-going vessels from Japan.

It shelved the proposal after the President counseled the Cabinet members to refer the plan again to the NEC for further study.

However, the Cabinet approved the PHIMA proposal upon the representation made by Ramon V. del Rosario, a local businessman, who appraised the President's advisory body of his business plan.

Del Rosario told members of the Cabinet that the PHIMA is capitalized at $22 million, 70 per cent of which is subscribed by Filipinos. He said $6 million would be subscribed by aliens mainly from the Gulf Oil Company of the United States.

In approving the PHIMA petroleum refinery, the Cabinet imposed the following conditions:

1. That the corporation should have at least 60 per cent Filipino capitalization;

2. Executive control of the firm must always be in the hands of Filipinos;

3. Foreign technicians, which would be employed at the start of the enterprise, should be replaced as soon as possible by Filipinos;

4. Dollar salaries of the foreign technicians should not be made out of the foreign exchange of the Central Bank;

5. That there should not be recurrent remittance in foreign exchange; and

6. That the initial $5 million requirement should be spread in three years.

Informed of the Ozamiz City fire, the President ordered the release of ₱50,000 from his contingent fund.

He ordered the release of the sum after hearing the report of Social Welfare Administrator Amparo P. Villamor, who had just returned from a flying trip to the scene of the fire.

January 22.—LABOR leaders and sugarcane planters arrived at an agreement on certain fundamental issues at a conference called by President Garcia today at Malacañang to solve the labor dispute in Negros Occidental.

As proposed by President Garcia, both parties laid the foundation for the elimination of so-called *contratistas* (labor contractors).

"Consent" elections will be held in *haciendas* where FFF officials claim to have a majority of the workers as members in order to decide if the labor union will be the one to enter into a collective bargaining contract with plantation owners in case of a favorable return.

Both parties also agreed on one election for both the migrant workers or *sacadas* and permanent plantation workers in *haciendas* where FFF officials claim the majority of the workers are affiliated to their union.

In other *haciendas* where the FFF has no majority, its officials proposed an election for migrant workers, to which proposition the sugarcane planters present objected vigorously.

It was also agreed upon that only workers included in the payroll of last December 18, when notices to strike were sent to 77 *haciendas,* will vote in the "consent" election, disallowing voting by proxy.

The "consent" elections will be conducted by the Department of Labor with the help of the Constabulary, whose sole function will be the preservation of peace and order during the occasion.

The farmers' federation will submit to the Department of Labor the list of plantations where they would like "consent" elections to be held.

The planters stated that they were for union recognition in their plantations and said that they pay the minimum wage to their agricultural laborers, as provided for by law.

However, even labor leaders acknowledged that labor contractors get a big cut in the workers' wages.

Secretary Castaño disclosed plans of his office to devise a method whereby plantation owners will pay directly to the migrant workers and thus eliminate labor contractors.

Both parties agreed to continue further talks to be presided by Secretary Castaño to iron out a few remaining kinks.

Senator Gonzalez, chairman of the Senate Social Justice Committee, appealed to the planters to provide better housing facilities to their migrant workers.

Present at the conference were Labor Secretary Angel Castaño, Executive Secretary Juan C. Pajo, Sen. Pacita M. Gonzalez, Rep. Inocencio Ferrer of Negros Occidental, Gov. Josue Cadiao of Antique, Jose Ma. Gomez, president of the National Federation of Sugarcane Planters; plantation owners Ciro Locsin, Roberto Llantada, and Ramon Nolan; Fr. Hector Mauri, S. J., Jeremias Montemayor, Jesus V. Ramos, and Tito Angudong, Jr., representing the Free Farmers Federation (FFF).

The President also conferred with Finance Secretary Jaime Hernandez on undisclosed matters. Other callers were former Press Secretary J. V. Cruz, Carlos Nivera, John Keesing, John Keljikan, Joseph Keenan, vice-president, AFL-CIO of the United States, and J. Kaukonen, labor attache of the American Embassy in Manila.

Dr. Urbano Zafra, minister counselor of economic affairs of the Washington embassy of the Philippines, called on President Garcia to get final instructions before leaving for his post after a two-month home leave.

PRESIDENT Garcia honored Japanese Ambassador Morio Yukawa at a formal dinner this evening at Malacañang.

At the dinner the President expressed his appreciation to the Japanese government and people for the warm reception accorded him and the members of his party during his recent state visit to Japan last December.

Chiefs of diplomatic missions, high government officials, and members of the presidential party to Japan were among the invited guests.

January 23.—PRESIDENT Garcia spent the whole day aboard the RPS *Sta. Maria,* working on his state-of-the-nation message which he will deliver before a joint session of Congress on Monday.

After informing Maj. Jose Estrella, a military aide, he was not receiving any caller, the President closeted himself in his cabin and proceeded to dictate page after page of draft copy to a Palace stenographer, Conrado Montales.

Pulling out of the Navy headquarters landing about 9:30 a.m., the *Sta. Maria* cruised slowly for about four hours taking a zigzag course from Manila to Corrigidor and back. The President, with the aid of a small table lamp in his cabin, worked uninterruptedly on his speech.

About 12:30 p.m., the President took time out from his work to have a light lunch. He had it served in his cabin. Then he continued with his dictation again.

On its way back from Corregidor to Manila, the *Sta. Maria* was overtaken by an incoming U. S. aircraft carrier escorted by three destroyers. Apparently recognizing the presidential ship, a large formation of white-clad sailors turned out on the huge carrier's deck and smartly saluted as they passed about half a mile away.

Helicopters launched from the carrier hovered for some time close to the *Sta. Maria* and took pictures of the presidential ship and its escort.

The *Sta. Maria* was back in Manila about 1:30 p.m. It anchored at its permanent moorings a few hundred yards from the Independent Grandstand on the Luneta. The President kept working until late in the night.

THE President ordered today the suspension of a commodity loan agreement recently approved by the Monetary Board of the Central Bank permitting what appeared to be an indiscriminate barter of the nation's dollar-

producing exports and the indiscriminate entry of Japanese goods to the detriment of the country's infant industries.

In a message dispatched this evening from aboard the RPS *Sta. Maria* anchored in Manila Bay, the President instructed Governor Miguel Cuaderno of the Central Bank to hold in abeyance the implementation of the agreement between the FIMCO of the Philippines and the Nippon Trading Co., Ltd., of Japan whereby Japanese goods would be imported to the Philippines in exchange with Philippine products, including copra.

The Chief Executive ordered the suspension of the agreement, pending determination of its legality and propriety so that a public hearing might be conducted on the question in which local industrialists and other citizens should be heard.

"Hold in abeyance the execution of this agreement until all concerned have had a chance to study the same," the President said in his curt order to Governor Cuaderno.

The projected barter was brought to the attention of the President by Rep. Joaquin Roces of Manila, chairman of the House committee on good government, who had expressed serious doubts as to the legality of the act of the Monetary Board in approving the transaction.

According to Rep. Roces, all no-dollar remittance importations were supposed to be governed by Republic Act No. 1410; hence, under the administration of the Department of Commerce. He pointed out that if the Central Bank could authorize barter, its abolition through the scrapping of R.A. 1410 would be of little use since the Central Bank would still be able to grant it.

In a letter sent over to the presidential yacht, Rep. Roces also informed the President that the agreement practically constituted a "monopolistic privilege" in favor of the FIMCO and the companies owned and operated by the E. M. Ramos Development Company, but added that should similar companies be granted identical privileges, "it would open the way for indiscriminate barter of our dollar-producing exports and at the same time opening the flood gates for the indiscriminate entry of Japanese goods to the ruin of our local infant industries."

"Entry of Japanese textiles may well ruin our textile industry for which we poured much of our dollars during these last few years," the President said.

January 24.—THE PRESIDENT ordered the preparation of a number of welfare measures designed to improve the living conditions of the nation's workers for recommendation to Congress when it convenes in regular session on Monday, it was announced by Press Secretary Jose C. Nable today.

The proposed measures include:

(1) Means of further reducing unemployment;

(2) Extension of social security benefits to agricultural workers;

(3) Intensification of the Administration's resettlement program;

(4) Stepping up the government's low-cost housing projects for workers; and

(5) Promotion of cottage industries.

The President said that although the rate of unemployment had gone down owing largely to the opening of new industries, ways should be found to further increase work opportunities in order to keep up with the increasing labor force. He instructed Labor Secretary Angel M. Castaño to draft a bill embodying his plans for employment.

The Chief Executive also pointed out that workers in government and private firms were already receiving social security benefits through the Government Service Insurance System and the Social Security System. Some such benefit should be extended to the agricultural laborers who constitute about 65 per cent of the nation's workers, he said.

Regarding the intensification of the Administration's resettlement program, the President stressed the advisability of relocating idle manpower in underdeveloped areas not only as a means of helping ease unemployment but also of increasing the nation's productivity.

In connection with his plan of facilitating the implementation of the government's low-cost housing projects all over the country, the President expressed his desire for a coordinated program aimed at providing homes only to deserving applicants and on an easy installment plan for a period of as long as 30 years.

The President is also considering the creation of an agency to coordinate all government entities concerned with the promotion of cottage industries as a means of increasing the earning capacity of the people in the rural areas and of improving their living standards.

Meanwhile, President Garcia remained aboard the RPS *Sta. Maria* the whole day today, polishing his state-of-the-nation message to Congress. He did not receive any caller.

Waking up early this morning, the President started his second day aboard the yacht by calling for a stenographer to whom he dictated some notes he had scribbled the night before for inclusion in the speech.

After a light breakfast, the Chief Executive continued with the tedious task of writing and re-writing portions of his message in the quiet seclusion of the presidential yacht, which remained at anchor in Manila Bay a few hundred yards off the Independence Grandstand on the Luneta.

The Chief Executive hopes to finish his message by tomorrow morning.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 328

REVOKING EXECUTIVE ORDER NO. 240, ISSUED ON FEBRUARY 16, 1957, ABOLISHING THE MUNICIPALITY OF PAGUDPUD IN THE PROVINCE OF ILOCOS NORTE

Pursuant to the authority vested in me by law, and in the interest of the public welfare, I, Carlos P. Garcia, President of the Philippines, hereby revoke Executive Order Numbered two hundred and forty, issued on February 16, 1957, abolishing the municipality of Pagudpud in the province of Ilocos Norte.

The revocation herein made shall take effect immediately.

Done in the City of Manila, this 14th day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

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MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 552

DECLARING THE THIRD SUNDAY OF JANUARY OF EVERY YEAR AS CHILDREN'S DAY

WHEREAS, we are all vitally interested in the well-being of children, especially in these times when they are exposed to so many temptations to stray away from the straight and narrow path;

WHEREAS, the future of the nation demands that children be given all the care and attention necessary to make them good and useful citizens; and

WHEREAS, it is necessary to set aside a day dedicated to children in the hope of arousing greater concern for their welfare;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the third Sunday of January of every year as Children's Day and designate the Children's Library and Museum, Inc., to take charge of its celebration.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 553

DECLARING TUESDAY, JANUARY 20, 1959, AS A SPECIAL PUBLIC HOLIDAY IN ALL MUNICIPALITIES AND MUNICIPAL DISTRICTS THROUGHOUT THE PHILIPPINES

WHEREAS, the election of barrio councils under Republic Act No. 1408 will take place on January 20, 1959;

WHEREAS, to give meaning to the Administration's policy on local autonomy, it is necessary that the barrio people be given full opportunity to participate in the elections;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby declare Tuesday, January 20, 1959, as special public holiday in all municipalities and municipal districts throughout the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER NO. 1

January 5, 1959

AUTHORIZING HON. ROBERTO ZURBANO, DISTRICT JUDGE OF CAGAYAN AND BATANES TO HOLD COURT IN BATANES PROVINCE.

In the interest of the administration of justice and pursuant to the provisions of Section 5 of Republic Act 296, as amended, the March term of court at Batanes is hereby postponed and the Honorable Roberto Zurbano, District Judge of Cagayan and Batanes, is hereby authorized to hold court in the latter province, beginning the first Tuesday of April, 1959, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 2

January 6, 1959

DESIGNATING JOSE P. SABIO, JUSTICE OF THE PEACE OF OPOL, MISAMIS ORIENTAL TO ACT AS MUNICIPAL JUDGE OF CAGAYAN DE ORO CITY.

In the interest of the administration of justice and pursuant to the provisions of Section 76 of Republic Act 521, otherwise known as the Charter of the City of Cagayan de Oro, Mr. Jose P. Sabio, Justice of the Peace of Opol, Misamis Oriental, is hereby designated Acting Municipal Judge of Cagayan de Oro City, effective January 7, 1959, and to continue only during the absence on leave of the regular incumbent.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 3

December 19, 1958

DESIGNATING ATTY. VICENTE HOMICILLIO OF ZAMBOANGA CITY TO ACT AS SPECIAL COUNSEL TO ASSIST THE CITY ATTORNEY OF THE SAME CITY.

Upon request of the Department of Public Works and Communications, in the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Atty. Vicente Homicillio, Motor Vehicles Office Registrar in Zamboanga City, is hereby designated Special Counsel to assist the City Attorney of Zamboanga City in the investigation and prosecution of cases involving violations of the Motor Vehicle Law pursuant to the provisions of Republic Act No. 1277, subject to the direction and control of the City Attorney, effective immediately and to continue until further orders, without additional compensation.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER NO. 4

January 7, 1959

DESIGNATING SPECIAL ATTORNEY LEONARDO R. LUCENA OF THE PROSECUTION DIVISION TO ASSIST THE CITY AND PROVINCIAL FISCALS AND CITY ATTORNEYS ALL OVER THE PHILIPPINES.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Leonardo R. Lucena, Special Attorney in the Prosecution Division, this Department, is hereby designated to assist the City Fiscal of Manila, City Attorney of Pasay City and all Provincial Fiscals, City Fiscals and City Attorneys all over the Philippines, in the investigation and prosecution of all violations of customs laws and regulations, as well as all cases of falsification under Title IV of the Revised Penal Code, and to assist the Presidential Fact Finding Committee (Bureau of Customs), effective immediately and to continue until further orders.

This amends Administrative Order No. 77, Series of 1958 of the Secretary of Justice.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 5

January 12, 1959

DESIGNATING JUSTICE OF THE PEACE IGNACIO ABRAGAN OF BALOI, LANAO, TO ACT AS ACTING MUNICIPAL JUDGE OF ILIGAN CITY.

In the interest of the administration of justice and pursuant to the provisions of Section 76 of Republic Act 525, otherwise known as the Charter of the City of Iligan, Mr. Ignacio Abragan, Justice of the Peace of Baloi, Lanao, is hereby designated Acting Municipal Judge of Iligan City effective January 19, 1959, and to continue only until the return to office of the regular incumbent.

JESUS G. BARRERA
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

January 1959

Fausto P. Valera as Deputy Commissioner of the Civil Service, January 9.

Angel V. Campoy as Judge of the Municipal Court of Dumaguete City, January 9.

Donato Noynay as Justice of the Peace of San Antonio, Samar, January 9.

Designations by the President

January 1959

Vicente Cabrera as Acting City Engineer of Cagayan de Oro City, January 8.

DECISIONS OF THE SUPREME COURT

[Nos. L-8922-L-8924. 28 February 1957] *

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee *vs.* FLORENTINO ENGUERO, JOSÉ TARIMAN, NAZARIO NARVARTE and DIONISIO BUENO, defendants and appellants.

CRIMINAL LAW; ROBBERY IN BAND; WHEN THREE CRIMES ARE COMMITTED.—Where after committing the first crime of robbery in band the appellants went to another house where they committed the second and after committing it they proceeded to another house where they committed the third, all of which constitute three separate crimes, punishable in accordance with the pertinent provisions of the Revised Penal Code. Obviously, the rule in People *vs.* De Leon, 49 Phil. 437 does not apply.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Surtida, *J.*

The facts are stated in the opinion of the Court.

Counsel de oficio Manuel E. Biloy for defendants and appellants.

Solicitor General Ambrosio Padilla and *Solicitor Esmeraldo Umali* for the plaintiff and appellee.

PADILLA, *J.:*

Florentino Enguero, José Tariman, Nazario Narvarte and Dionisio Bueno were charged with the crime of robbery in band in three separate informations and after a joint trial the Court of First Instance of Camarines Sur found them guilty as charged and sentenced them as follows—

(*a*) *In Criminal Case No. 2714,* Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8 years and 21 days of *prisión mayor* nor more than 14 years, 10 months and 21 days of *reclusión temporal;* José Tariman, Nazario Narvarte and Dionisio Bueno each to suffer an indeterminate penalty which shall not be less than 4 years and 2 months of *prisión correccional* nor more than 8 years and 21 days of *prisión mayor;* and all of them to indemnify Florentina Ogarte de Binaday in the amount of ₱36.75 and to pay the costs;

(*b*) *In Criminal Case No. 2715,* Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8 years and 21 days of *prisión mayor* nor more than 14 years, 10 months and 21 days of *reclusión temporal;* José Tariman, Nazario Narvarte and Dionisio Bueno each to suffer an indeterminate penalty which shall not be less than 4 years and 2 months of *prisión correccional* nor more than 8 years and 21 days of *prisión mayor;* and all of them to indemnify Cresenciano Magistrado and Juan Margate in the amount of ₱38.88 and ₱17.80 respectively, and to pay the costs; and

(*c*) *In Criminal Case No. 2716,* Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8

* This Decision had been published in Off. Gaz. Vol. 54, No. 36, December 15, 1958, pp. 8227-8231 and the same was republished due to inadvertence in printing.

years and 21 days of *prisión mayor* nor more than 14 years, 10 months and 21 days of *reclusión temporal;* José Tariman, Nazario Narvarte and Dionisio Bueno each to suffer an indeterminate penalty which shall not be less than 4 years and 2 months of *prisión correccional* nor more than 8 years and 21 days of *prisión mayor;* and all of them to indemnify Anatolia Bragais in the amount of ₱3.00 and to pay the cost. In the three cases. they shall not suffer subsidiary imprisonment in case of insolvency on account of the nature of the principal penalty.

The one bottle of Siutong wine, Exh. B, shall be returned to Cresenciano Magistrado; the pair of red leather shoes, Exh. F; the jacket, Exh. G; the blue pant, Exh. H; and the hammer, Exh. I to Anatolia Bragais; and the birthstone ring, Exh. E, to Juan Margate. The balisong, Exh. M, and the bolo, Exh. C, and its scabbard, Exh. C–1, are confiscated. The pistol, Cal. 45, W/SN–394701, by decision of this Court in Criminal Case No. 2729, is already confiscated. The gray skin suit marked Exhs. K and K–1; the pair of tennis shoes Exh. D; the raincoat, Exh. L; and the flashlight, Exh. N, shall be returned to Florentino Enguero. The towel; Exh. O; the skin pant, Exh. F, and the pair of shoes, black and white, Exh. Q, shall be returned to Nazario Narvarte.

They appealed. José Tariman withdrew his appeal. As no question of fact is raised, the only error assigned to have been committed by the trial court being the conviction and sentence of the defendants for three robberies in band instead of only one, the Court of Appeals certified the appeal to this court.

The trial court found the following:

At about 3:00 o'clock in the afternoon of July 9, 1952 the four defendants met at Yabo River, Lupi, Camarines Sur, after Florentino Enguero had previously provided himself with a pistol. From the river they went to the house of Enguero where they took their supper. After eating Enguero issued to Nazario Narvarte a bolo, to José Tariman a balisong and to Dionisio Bueno, a piece of hardwood, while he himself had the pistol. Thus armed they all started at about 7:00 in the evening for Jaloban, Pigbasagan, Lupi, but before reaching the barrio itself, they passed at the house of Teodoro Banta where Enguero ordered him and his brother-in-law, Francisco Bugagao, at the point of his pistol to guide them to the barrio. At the instance of Enguero, their hands were tied behind their backs. With the two as guides, the group proceeded towards the barrio, and on the way they met Pedro Bragais by the stairs of his house. Pointing his pistol at him, Enguero had his hands tied behind his back and ordered him to go with them. They continued on their way and later they met again one Ernesto Belgado whose hands they also tied behind his back. They took him along with them too. They arrived in the barrio at about 8:00 in the evening and went directly to the store of Cresenciano Magistrado which adjoins his house. They made the four tied men sit on the ground in front of the store guarded by Narvarte who had the bolo in his hand, while Enguero entered the store. Pointing his pistol at Magistrado, Enguero demanded money from him. Fearing for his life, Magistrado ordered his wife who was in the house to give their money to them. Enguero, Bueno and Tariman then went up the house and took ₱4.80 from Magistrado's wife. And upon finding Juan Margate, the barrio school teacher who was lodging with the Magistrados, in one of the rooms of the house, Bueno who had the open balisong in his hand brought him down to

the ground and there tied his hands behind his back. Upon seeing a birthstone ring in Margate's finger, Bueno forcibly took it away from him. After a while Enguero and Tariman went down to the store and told Magistrado to give them wine which they drank. After drinking Enguero took the goods displayed in the store and passed them on to Bueno and Tariman who piled them on the ground in front of the store. The goods consisted of one dozen bottles of Coca-Cola worth ₱1.20; one dozen cans of sardines worth ₱7.20, one dozen bottles of wine, Hoctung, worth ₱3.00; one dozen Sardine at ₱4.80; one dozen bottles Pomade worth ₱4.80; two pairs of gold earings worth ₱10.00; one dozen cartons Purico, valued at ₱3.00; and one package of Matches worth ₱0.33. The total value of these articles together with the sum of ₱4.80 taken from the wife of Magistrado amounts to ₱39.13. The defendants also carried away the following articles belonging to Juan Margate; one birthstone ring worth ₱70.00; one pair of tennis shoes worth ₱5.50; one pair of sock worth ₱2.00; one cake of soap worth ₱.30; a medal and a crucifix worth ₱10.00, all with a total value of ₱87.00.

After having committed the acts narrated above and when it was about 10:00 in the evening, the four defendants, together with Magistrado, Margate whose hands were still tied behind his back and the four other tied individuals, all of whom they forced to go with them, went to the nearby house of Victorino Togno about 14 meters from the house of Magistrado (See Exh. R). Upon arriving Florentino Euguero, José Tariman and Clementino Carulla (this last one was originally accused with the four defendants, but the case against him was later dismissed upon motion of the Provincial Fiscal) went up the house, while their above-named companions remained on the ground guarded by Bueno and Narvarte. Anatolia Bragais, wife of Victorino Togno, and her son were in the house. Pointing at the neck of Anatolia a sharp instrument, Enguero demanded money from her. Carulla opened a trunk and took ₱3.00 from it. Enguero asked Anatolia where she kept the rest of her money, and to make her reveal it, he threatened to cut her throat with the sharp instrument. She told him that she had no other money. However, Enguero took and carried away from her house a pair of shoes worth ₱18.00, a jacket worth ₱12.00, a blue pant worth ₱12.00 and a hammer. These articles including the ₱3.00 in cash have a total value of ₱45.00. They then left the house.

After committing the acts mentioned in the next preceding paragraph, the four accused and Carulla, together with Magistrado, Margate and the four tied men whom they again forced to go with them, proceeded to the house of Florentina Ogarte, wife of Ireneo Binaday, located about 54 meters from the house of Cresenciano Magistrado (See sketch, Exh. R). The time was about 11:00 o'clock in the evening. Upon arriving Enguero and Carulla went up the house while Tariman, Narvarte and Bueno again stood as guards on the ground. Enguero pointed his pistol at Florentina and ordered her to produce her money and jewels. She replied that she had none; but Enguero nonetheless searched her waist-line. Not having found anything, he began to hold her private parts, but she begged for pity and said they could get instead the goods in her store. Enguero left her and took from the store 2 dozen cans of Sardine worth ₱8.20; 15 tins of Salmon worth ₱11.15; 14 tins of Tinapa worth ₱4.20; 2 dozen bottles of Hoctung wine worth ₱8.40 besides money amounting to ₱4.80. He threw the goods to his co-defendants on the ground through the door. The value of the goods and money taken makes a total of ₱36.75. Enguero and Carulla then asked Florentina to provide them with empty sacks which she did. Bueno, Tariman and Nar-

varte gathered the goods and put them inside the sacks. They then left the house after cautioning Florentina not to report them to the authorities.

From this last house the four defendants, together with those whom they forced to follow them, returned to the store of Magistrado. Upon arriving they gathered the other stolen goods and put them inside the sacks. Then they looked for some one who could carry the goods for them. They found Glicerio Buensalida and Absalon Medrano, after which they untied the hands of Margate, Bragais, Delgado, Banta and Bugagao. After warning them not to report to the authorities, the four defendants left and went away with the stolen goods carried by Buensalida and Medrano.

After a few days the defendants were apprehended pursuant to a warrant of arrest issued by the Justice of the Peace Court of Lupi on July 16, 1952. After their arrest Enguero and Tariman were investigated by Capt. Dominador M. Gutierrez of the 1st Camarines Sur PC Company, and Narvarte and Bueno by First Lieut. Jaope Nobleza of the same company. The investigation was made in question and answer form and reduced to writing which later was subscribed and sworn to by the defendants before Mamerto M. Bonot, Justice of the Peace of Lupi. Exhibit S is the sworn statement of Enguero, Exhibit T of Bueno, Exhibit U of Narvarte and Exhibit V of Tariman. In these exhibits the four accused have admitted and confessed among other statements, their respective participation in the three different robberies, pointing to the investigators the whereabouts of some of the stolen articles.

Following the lead in the written confessions, Sgt. Fernando Narvaez took the defendants to their respective houses on July 22, 1952 and recovered from them some of the goods and arms used during the robberies. From Florentino Enguero the following were recovered:

1 suit, skin, gray, Exhibits K and K–1
1 bottle of Siu Tung wine, Exhibit B
1 pair of Tennis shoes (Elpo), Exhibit D
1 raincoat, rubber, used during the robbery, Exhibit L
1 knife (balisong) used during the robbery, Exhibit M
1 flashlight used during the robbery, Exhibit N
1 pistol, Cal. 45 W/SN–394701 with one magazine and one ammunition used during the robbery.

From Nazario Narvarte, the following were recovered:
1 towel (white), Exhibit O
1 pant skin (Ceniza), Exhibit T
1 pair shoes, black and white, Exhibit Q
1 hammer (Steel) Exhibit I.

From Dionisio Bueno, the following were recovered:
1 ring, birthstone, Exhibit E
1 pant skin (blue), Exhibit H
1 jacket, skin, light green, Exhibit G.

One pair of leather shoes (Red), Exhibit F, was recovered from José Tariman.

The above articles are listed in an inventory, Exhibit J, prepared by Sgt. Narvaez, in which all the four defendants certified that the goods were taken from their custody. As evidence of this fact, each and everyone of them signed Exhibit J below the articles recovered respectively from them (Exhibits J–1, J–2, J–3 and J–4).

Counsel *de oficio* argues that the appellants are guilty of one crime only citing in support of his contention the case of People *vs.* de Leon, 49 Phil. 437. The contention

is without merit. In the case cited by counsel the defendant entered the yard of a house where he found two fighting cocks belonging to different persons and took them. In this case, after committing the first crime of robbery in band the appellants went to another house where they committed the second and after committing it they proceeded to another house where they committed the third. Obviously, the rule in the case cited cannot be invoked and applied to the present.

The crime committed is robbery in band punished in article 294, paragraph 5, of the Revised Penal Code, as amended by Republic Act No. 18, in connection with article 295 of the same Code, as amended by Republic Act No. 373, with *prisión correccional* in its maximum period to *prisión mayor* in its medium period. As the robbery was committed in band, the penalty to be imposed is the maximum period of the proper penalty, which is *prisión mayor* in its medium period, or from 8 years and 1 day to 10 years. The second paragraph of article 295 of the Revised Penal Code which imposes the penalty next higher in degree upon the leader of the band has been left out by Republic Act No. 373 amending further article 295 of the Revised Penal Code.

Pursuant to the Indeterminate Sentence Law, the penalty to be imposed upon each of the appellants is the next lower to that prescribed by the Revised Penal Code for the offense, or 4 months and 1 day of *arresto mayor*, as minimum, and 8 years and 1 day of *prisión mayor*, as maximum, in each of the three crimes committed, and the accessories of the law.

Modified as to the penalty to be imposed upon each of the three appellants, the rest of the judgment appealed from is affirmed, with proportionate costs in each case against the appellants.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Judgment affirmed with modification.

[No. L-8993. 29 October 1956]

ALFRED HAHN, ET AL., plaintiffs and appellees, *vs.* JUAN YSMAEL & CO., INC., ET AL., defendants and appellants

APPEAL AND ERROR; DISMISSAL OF APPEAL; FAILURE TO FILE APPEAL BOND ON TIME.—Where the appeal bond was filed twelve days after the expiration of the thirty day period within which to perfect an appeal by the filing of a notice of appeal, appeal bond and record on appeal, the order dismissing the appeal should not be disturbed.

APPEAL from an order of the Court of First Instance of Manila. Ocampo, *J.*

The facts are stated in the opinion of the Court.

Ciriaco Lopez, Jr., and *Manuel L. Lintag* for plaintiffs-appellees.

Eusebio C. Encarnación for the defendants-appellants.

PADILLA, *J.:*

Appeal from an order dated 27 November 1953 dismissing an appeal for failure to file the appeal bond within the reglementary period and from another dated 16 January 1954 denying a motion for relief.

On 22 September 1953 judgment was rendered by the Court of First Instance of Manila in civil case No. 14624, Alfred Hahn et al., plaintiffs *vs.* Juan Ysmael & Co., Inc., et al., defendants, for the plaintiffs. On 3 October the defendants received notice of the judgment; on 5 October they filed a notice of appeal; on 24 October, the amended record on appeal; and on 14 November, the appeal bond of ₱60. On 13 November the plaintiffs moved for the dismissal of the appeal, the appeal bond having been filed beyond the reglementary period of thirty days from notice of the judgment. On 27 November, over the objection of the defendants, the Court dismissed the appeal upon the ground invoked by the plaintiffs. A motion for relief on the ground of excusable neglect in not filing the appeal bond on time was denied. Defendants have appealed from both orders.

The appeal bond was filed on 14 November 1953, or twelve days after the expiration of the thirty-day period within which to perfect an appeal by the filing of a notice of appeal, appeal bond and record on appeal. Following the rule laid down in Alvero *vs.* de la Rosa, 76 Phil. 428; Peralta *vs.* Solon, 77 Phil. 610; Medran *vs.* Court of Appeals, 46 Off. Gaz. 4277; Rural Progress Administration *vs.* Temporosa, 46 Off. Gaz. 5450; Salva *vs.* Palacio, G.R. No. L-4247, 30 January 1952; Espartero *vs.* Ladaw, 49 Off. Gaz. 1439; and Mallare *vs.* Panahon, 52 Off. Gaz. 219, the order dismissing the appeal cannot be disturbed.

As to relief under Rule 38, even granting that counsel for the defendants was overburdened with work which he did not anticipate, yet the reason given for his failure to file the appeal bond within the reglementary period, to wit: "because I desired to favor my clients not to make an early disbursement of payment * * *," is so flimsy that the trial court correctly overruled it.

The orders appealed from are affirmed, with costs against the appellants.

Parás, C. J., Montemayor, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Orders affirmed.

[No. L—9072. October 23, 1956]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellant, *vs.* CORNELIO FERRER, defendant and appellee

CRIMINAL PROCEDURE; APPEAL; GOVERNMENT CANNOT APPEAL IF DEFENDANT WOULD BE PLACED IN DOUBLE JEOPARDY.—Where the defendant had already been arraigned and entered his plea, and the trial had begun, and the prosecution had rested its case, the Government however meritorious its case cannot appeal the order of dismissal without violalating the right of the defendant not to be placed in double jeopardy.

APPEAL from an order of the Court of First Instance of Negros Occidental. Teodoro, Sr., *J.*

The facts are stated in the opinion of the Court.

Solicitor General Ambrosio Padilla and *Solicitor Pacifico P. de Castro* for the plaintiff-appellant.

Arturo M. Glaroga for defendant-appellee.

MONTEMAYOR, *J.:*

The Government is appealing from an order of the Court of First Instance of Negros Occidental, dismissing the case against the defendant Cornelio Ferrer for acts of lasciviousness, on a motion to quash filed by him.

Cornelio Ferrer was charged with acts of lasciviousness in the Justice of the Peace Court of Asia, Negros Occidental on the basis of a written complaint, later amended, filed by the offended party, Perla Engcoy. After the corresponding preliminary investigation, the Justice of the Peace Court finding "probable cause that the offense charged has been committed and that the defendant is probably guilty," elevated the case to the Court of First Instance of Negros Occidental, where the case was tried on February 15, 1955. After the prosecution had rested its case, the hearing was adjourned to March 1, 1955. In the meantime, on February 24 of the same year, the accused filed a motion to quash on the ground that the jurisdiction of the trial court to try the case had not been established for the reason that the evidence for the prosecution merely tended to prove that the acts of lasciviousness were committed in the house of the offended party, without showing where that house was situated. The prosecution filed a written opposition to the motion to quash, and the defense filed a reply to said opposition, after which the trial court by order of March 23, 1955, granted the motion to quash and dismissed the case with costs de oficio.

We have examined the record of the case, particularly, the testimony of the offended party and that of the Chief of Police and we are fully convinced that the prosecution had established the jurisdiction of the trial court, that is

to say, that the offense charged was committed in the town of Asia, Province of Negros Occidental. In the first place, the complaint and amended complaint both under oath, filed by the offended party in the Justice of the Peace Court allege that the acts of lasciviousness were committed against her in her house in the *poblacion* of the Municipality of Asia, Province of Negros Occidental. In the second place, testifying as a witness at the trial, she gave as her residence the town of Asia, Negros Occidental. Then she testified that the acts of lasciviousness were committed on her person in her house. (pp. 6, 7, 11, t.s.n.) As the Solicitor General says, in the absence of proof that she had more than one house, it is presumed that the crime was committed in her house in Asia, Negros Occidental, within the jurisdiction of the trial court. Then we have the testimony of Celestino Regala, Chief of Police of Asia, wherein he declared that he received the complaint filed by Perla Engcoy against Cornelio Ferrer; that he made the corresponding investigation, specially since the accused was one of his policemen, charged with having committed acts of lasciviousness against the offended party, Perla, in her own house, and he asserted that the distance of said house from the Municipal building of Asia is around 200 yards (pp. 72–73, t. s. n.) With all this evidence, we cannot understand how the trial court could say that the prosecution had not established its jurisdiction to try the case.

Unfortunately, however, we believe that the Government however meritorious its case cannot appeal the order of dismissal without violating the right of the defendant not to be placed in double jeopardy. The accused herein has not filed a brief on appeal raising this question of double jeopardy. Nevertheless, Rule 118, Section 2 of the Rules of Court provides: "The People of the Philippines can not appeal if the defendant would be placed hereby in doubt jeopardy," and we have to give force and effect to said rule. Here, the defendant had already been arraigned and he had entered his plea, and the trial had begun, and the prosecution had rested its case. We hold that the appeal of the Government from the order of dismissal would place the accused in double jeopardy.

We find the present case to be one of miscarriage of justice because the accused was practically acquitted without considering the merits of the case, all due, unfortunately, to the error of the trial court. However, this Tribunal finds itself helpless to correct the error and must respect and enforce the right of the accused granted by law and guaranteed by the Constitution.

Without anticipating or advancing any opinion as to the innocence or guilt of the accused, since he is a munic-

ipal policeman, it is suggested that he be subjected to an administrative investigation. Let copies of this decision be furnished the Office of the President and the Municipal Council of Asia, Negros Occidental.

IN VIEW OF THE FOREGOING, the appeal filed on behalf of the Government is hereby dismissed with costs de oficio.

Parás, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Appeal dismissed.

[Nos. 11128-33. December 23, 1957]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RENE ESCARES, defendant and appellant

CRIMINAL LAW, PENALTY; THREE-FOLD RULE, WHEN TO BE TAKEN INTO ACCOUNT.—The three-fold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code, can only be taken into account, not in the imposition of the penalty, but in connection with the service of the sentence imposed.

APPEAL from a judgment of the Court of First Instance of Rizal. Tan, *J.*

The facts are stated in the opinion of the Court.

Bienvenido B. Manangan for defendant and appellant.

First Assistant Solicitor General Guillermo E. Torres and *Solicitor Jorge R. Coquia* for the plaintiff and appellee.

BAUTISTA ANGELO, *J.:*

On September 13, 1950, six separate informations for robbery were filed in the Court of First Instance of Rizal against Salvador Poblador, Armando Gustillo and Rene Escares. When these cases were called for hearing on March 2, 1951, Rene Escares was still at large and, by agreement of the parties, they were tried jointly against Salvador Poblador and Armando Gustillo. A decision was thereafter rendered against them finding them guilty of the crimes charged and convicting them accordingly.

On April 21, 1954, Rene Escares was arraigned and pleaded not guilty in each of the six above-mentioned cases but later he asked permission to withdraw his former plea of not guilty and substitute it for a plea of guilty. The trial court granted the petition and forthwith it rendered a decision of the following tenor:

"When these cases were called for trial, the accused asked permission to withdraw his former plea of not guilty and substitute it with that of guilty in all these cases. The Court granted said petition, and the accused forthwith freely and voluntarily pleaded guilty in all these cases.

"WHEREFORE, the Court find the accused Rene Escares guilty of the crimes charged in the informations in all these cases, and, in accordance with the provisions of Article 70 of the Revised Penal Code, hereby sentence said accused to twelve (12) years, six (6) months and one (1) day in all the cases, with all the accessories of the law, and to pay the costs."

Rene Escares appealed from the decision but having taken the case to the Court of Appeals, the latter certified it to us on the ground that the only issue involved is one of law.

The only question raised in this appeal refers to the penalty imposed on the appellant. He contends that since he pleaded guilty to all the crimes charged and there is

no aggravating circumstance to offset it, the penalty to be imposed on him should be reduced to the minimum.

It should be noted that the imposable penalty in each of the six cases where appellant pleaded guilty in accordance with paragraph 5, Article 294, of the Revised Penal Code, is *prisión correccional* in its maximum period to *prisión mayor* in its medium period, which should be applied in its minimum period in view of the mitigating circumstance of plea of guilty, not offset by any aggravating circumstance, or from 4 years 2 months and 1 day to 6 years one month and 10 days. Applying the Indeterminate Sentence Law, the appellant should be sentenced for each crime to an indeterminate penalty the minimum of which shall not be less than 4 months and 1 day of *arresto mayor* nor more than 4 years, and 2 months of *prisión correccional* and the maximum shall not be less than 4 years 2 months and 1 day *prisión correccional* nor more than 6 years 1 month and 10 days of *prisión mayor*. But in applying the proper penalty, the trial court imposed upon appellant the threefold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code. This is an error for said article can only be taken into account, not in the imposition of the penalty, but in connection with the service of the sentenced imposed.

The penalty imposed upon appellant by the trial court should therefore be modified in the sense that he should suffer in each of the six cases an indeterminate penalty of not less than 4 months and 1 day of *arresto mayor* and not more than 4 years 2 months and 1 day of *prisión correccional*, plus the corresponding accessory penalties provided for by law. These penalties should be served in accordance with the limitation prescribed in paragraph 4, Article 70, of the Revised Penal Code.

Modified in the sense above indicated, we affirm the decision of the trial court, with costs against appellant.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Order affirmed with modification.

[No. L-7805. December 24, 1957]

PETRONILO CASTAÑEDA, petitioner, *vs.* CATALINA M. DE LEÓN, and THE COURT OF APPEALS, respondents

PURCHASE AND SALE; WHEN PROPERTY WAS SOLD TO TWO VENDEES; RIGHTS OF PARTIES TO BE DETERMINED IN AN INDEPENDENT AND ORDINARY SUIT AND NOT IN PROCEEDING FOR EXECUTION.—A complaint for injunction was instituted by PC against RL & FL to restrain the latter from fencing lot No. 11 and for damages, and judgment having been rendered for plaintiff, a writ of execution was issued directing defendants to demolish a house and other improvements erected thereon which writ was also served upon CL who claims to be the owner of the house and the other improvements on the land, but was not made a party to the case; that she acquired right over said lot from the spouses RL and FL for ₱1,000 and the latter in turn acquired the whole parcel from PR and AB. CL introduced improvements thereon as well as the erection of two houses of strong materials. After the first sale of the property to RL and FL, PR and her husband again sold the land to PC without first rescinding the previous sale. The problem is that PR had sold the residential land to two vendees, first to RL and later to PC; HELD: that the issue as to whether or not CL may be considered as privy to the rights of the defendants RL and FL includes the determination of the correlative rights of the parties to be decided in an independent suit. The rights of CL who has constructed two houses and a fence on one-half of the residential lot involved complicated questions of fact and good faith which should be investigated and decided and certainly this can not be done in the proceedings for execution. The question can be decided fairly and justly only in an ordinary suit between the parties, as the correlative rights and obligations of owner and builder were never at issue in Civil Case No. Q-64 because CL was not allowed to be a party thereto.

REVIEW by certiorari of a decision of the Court of Appeals.

The facts are stated in the opinion of the Court.

José W. Diokno for petitioner.

Jesús Paredes for respondent Catalina de León.

LABRADOR, *J.:*

Certiorari against the decision of the Court of Appeals, 3rd Division, which reads as follows:

"WHEREFORE, premises considered, the order of August 30, 1952 of the respondent judge, the Hon. Hermogenes Caluag, (Appendix B) is hereby set aside. The Court of First Instance of Quezon City is ordered to set for hearing petitioner's claim that the decision in Civil Case No. Q-64 is not enforceable against her alleged rights to one-half of the property involved in said case. Let evidence be presented to determine solely the question of whether or not petitioner Catalina M. de León is a successor in interest by title subsequent to the commencement of the action in Civil Case No. Q-64 as contemplated by Rule 39, sec. 44 (*b*). Thereafter

let the proper action be taken by the court *a quo* as its findings after the hearing herein ordered may warrant.

"IT IS SO ORDERED."

In civil case No. Q–64, a complaint for injunction was instituted by Petronilo Castañeda against Rosario B. de Leon and her husband, Francisco de Leon, to restrain the latter from fencing the lot known as Lot No. 11, Block K–19 of the Diliman Estate Subdivision and from making construction thereon and to pay damages. Q–64 was filed on October 17, 1949, and judgment in favor of the plaintiff having been rendered a writ of execution was issued on February 6, 1952, directing the defendants to demolish a house and other improvements erected on the land. This writ of execution was served upon Catalina de Leon, who claims to be the owner of the house and the other improvements on the land. As Catalina de Leon refused to remove the house and the other improvements, the judge issued an order requiring her to appear and explain why the building and the other improvements should not be demolished. Complying with this order, Catalina de Leon filed a written explanation in which she claims that she was not a party in civil case No. Q–64; that she acquired right to one-half of the land from the spouses Rosario de Leon and Francisco de Leon for ₱1,000, and that the latter in turn acquired the whole parcel from Perfecta Roque and Aurelio Bautista on July 11, 1949; that Catalina de Leon caused the portion sold to her to be fenced and ordered the erection of two houses of strong materials with the consent of her predecessors-in-interest, Rosario de Leon and Perfecta Roque; that after the first sale of the property in July, 1949 to Rosario B. de Leon and Francisco de Leon, Perfecta Roque and her husband again sold the land to Petronilo Castañeda, who offered to buy the same for a higher price, but that this second sale by Perfecta Roque was executed without first rescinding the former sale to Rosario B. de Leon and Francisco de Leon; that previous to the sale by Perfecta Roque of the land to Petronilo Castañeda, Rosario B. de Leon and Francisco de Leon brought an action in the Court of First Instance of Manila for specific performance (No. 9366), and this case resulted in a decision of December 22, 1950, ordering Perfecta Roque to return ₱900 to plaintiff therein, Rosario B. de Leon, but that the spouses Rosario de Leon and Francisco de Leon, having had some family trouble with Catalina de Leon, connived with Perfecta Roque and Petronilo Castañeda to have the case dismissed to the prejudice of Catalina de Leon; and that before the final disposition of the action in said civil case No. 9366 Perfecta Roque had sold the property to another buyer, Petronilo Castañeda, on October 3, 1949; that in the subsequent

suit that Castañeda brought against Rosario B. de Leon, No. Q-64, Catalina de Leon asked for permission to intervene but the court denied the same.

Upon the submission of the above explanation, Petronilo Castañeda filed an opposition alleging that it is not true that Catalina de Leon was not aware of the proceedings between Rosario B. de Leon and Petronilo Castañeda. Upon the filing of this opposition, the Court of First Instance declared that the claim of Catalina de Leon on the property was a contingent one based upon the ultimate consummation of the sale between Francisco and Rosario de Leon on one hand, and Perfecta Roque and Aurelio Bautista on the other; that as the action that Rosario B. de Leon and her husband brought against Perfecta Roque terminated in a dismissal, no right whatsoever has been acquired by the claimant Catalina de Leon. In consequence the court found the explanation of Catalina de Leon without merit and ordered the removal of the house and the improvements that Catalina de Leon had constructed on the property. It is against this order that the case was brought to the Court of Appeals, in which the court finally decided the controversy in its order abovequoted.

It will be seen from the order under consideration that the only issue directed to be determined upon the return of the case to the court below is whether or not Catalina de Leon may be considered as a privy to the rights of the defendants Rosario B. de Leon and Francisco de Leon in civil case No. Q-64, in which Petronilo Castañeda is plaintiff. Upon the resolution of that issue the question as to whether or not the improvements of Catalina de Leon would be removed would be decided, according to the decision appealed from. It is true that Catalina de Leon would be bound by the judgment in Q-64 if she is a privy to Rosario de Leon and Francisco de Leon, defendants in the action. But the facts and circumstances disclosed in the explanation of Catalina de Leon show that she had purchased the one-half portion of the land in good faith and also constructed her two houses and the fence surrounding the lot also in good faith. And we can not agree that the limited issue remanded to the trial court for determination would and can finally determine fully and completely the correlative rights and obligations of Petronilo Castañeda, the apparent owner of the land, and Catalina de Leon, the owner of the house and the other improvements thereon. The order of the Court of Appeals, while not containing any statement to the effect that the correlative rights of the said parties have to be decided in an independent suit, may be interpreted to mean that the decision of the issue

as to whether Catalina de Leon is a privy would also determine said correlative rights. Catalina de Leon is not a party to the action instituted by Petronilo Castañeda against Rosario de Leon and her husband, and her attempt to intervene was denied by the court. The explanation filed by Catalina de Leon in the court below seems to show that she acquired her rights to the properties, consisting of one-half of the land and two houses and other improvements built thereon, prior to the acquisition of the land by Petronilo Castañeda. Anyway, Catalina de Leon bought one-half of the land on October 5, 1949 and the action that Castañeda against Rosario de Leon was subsequent thereto, i.e., on October 17, 1949. Furthermore, it does not appear that any notice of *lis pendens* was ever noted on the title of the property before Catalina de Leon built the house and made the improvements on the land.

The problem that has arisen proceeds from the fact that Perfecta Roque had sold the residential land to two vendees, first to Rosario B. de Leon and later to Petronilo Castañeda. If justice is to be done to the rights of Rosario B. de Leon's vendee, Catalina de Leon, who had constructed two houses and a fence on one-half of the residential lot in question, complicated questions of fact and good faith will have to be investigated and decided and certainly this can not be done in the proceedings for execution. The question can be decided fairly and justly only in an ordinary suit between the parties, as the correlative rights and obligations of owner and builder were never at issue in civil case No. Q–64 because Catalina de Leon was not allowed to be a party to the suit.

For the foregoing considerations, the decision of the Court of Appeals is hereby affirmed insofar as it sets aside the order of demolition issued by respondent judge, Hon. Hermogenes Caluag, on August 30, 1952, but that portion thereof which directs the case to be remanded to the trial court for determination if Catalina de Leon may be considered a privy to Rosario de Leon, is hereby set aside; and it is hereby declared and ordered that the correlative rights of Petronilo Castañeda and Catalina de Leon to the land and the improvements thereon be decided in a separate action. No costs in the appeal.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Decision affirmed with modification.

DECISIONS OF THE COURT OF APPEALS

[No. 15302-R. August 27, 1958]

URBANO ARANDA, plaintiff and appellant *vs.* JUANA DE LARA ET AL., defendants and appellees

1. RESERVA TRONCAL; REQUISITES.—The requisites of "reserva troncal" are: (1) property received by a descendant by gratuitous title from an ascendant or from a brother or sister; (2) said descendant died without issue; (3) the property is inherited by another ascendant by operation of law; and (4) existence of relatives within the third degree belonging to the line from which said property came. (Cited in Padilla's Civil Code, Volume 2, page 281, 1953 edition)
2. ID.; NATURE; RESERVOR DEEMED AN ABSOLUTE OWNER, SUBJECT TO RESOLUTORY CONDITION.—While there are three theories regarding the nature of "reserva troncal" or the right of the reservor (reservista) namely, that the reservor is either a *usufructuary, trustee or absolute owner,* it is the consensus under our civil law to adopt the last concept as prevailing. In other words, the reservor is deemed an absolute owner, his right being subject only to a resolutory condition, namely, the existence of third degree relatives as reservees at the time of the reservor's death (Padilla's Comments on article 891, page 283, *supra*).
3. ID.; ID.; RESERVEE'S RIGHT STRICTLY PERSONAL.—A reservee's right is strictly personal and if he does not take advantage of his right he is deemed to have renounced the same, and his right ceases to exist upon his death. His descendants do not inherit from him by right of representation (Art. 970, New Civil Code) because these descendants become relatives of the 4th degree.
4. ID.; ID.; EXCEPTION TO THE PROHIBITED RIGHT.—The only exception to the prohibited right is in the case of nephews of the deceased person from whom the reservor's property came. These "reservatorios" have the right to represent their ascendants—fathers and mothers of said deceased person and consequently relatives within the third degree in accordance with Article 811 of the New Civil Code (Florentino *vs.* Florentino, 40 Phil., 480).
5. ID.; ID.; RULE IN COUNTING THE THIRD DEGREE.—Some authors are of the opinion that the third degree should be counted from the source of the property—the original ascendant or brother or sister who gives her property to her descendants by gratuitous title. However, in our jurisdiction, it is the rule that in counting the third degree, the "propositus"—the descendant who receives the property gratuitously and who dies—should be the starting point (Cabardo *vs.* Villanueva, 44 Phil. 186).

APPEAL from a judgment of the Court of First Instance of Bulacan. Perez, *J.*

The facts are stated in the opinion of the Court.

Gualberto Cruz, for plaintiff and appellant.

Jose de Guia, for defendant and appellee.

PICCIO, *J.:*

It appears from the evidence that Romualdo Aranda died on August 22, 1937 at Bigaa, Bulacan leaving defendant Juana de Lara as his surviving spouse and Filomena Aranda, the only child he had with said spouse. On December 17, 1937 Filomena Aranda died single.

At the time of Filomena's Aranda death (December 17, 1937) Patricio Aranda and Juan Aranda (brothers of Romualdo Aranda) were then living. Intestate proceedings for the settlement of the estate of deceased Romualdo Aranda (Special Proceeding No. 5512) was not, however, instituted until after the death of Filomena Aranda. Juan Aranda died on August 23, 1943.

On August 26, 1944, the court *a quo* approved the project of partition (Annex A) consisting of 10 pages, in Special Proceeding No. 5512. By virtue of said approved project of partition dated November 23, 1940, certain properties were adjudicated to Juana de Lara as her half share in the conjugal estate, and other set of properties consisting of 35 items under letter B (with heading "Adjudication") were adjudicated to her (Juana de Lara) as her inheritance from her daughter, Filomena Aranda, who had inherited the said 35 parcels from her deceased father Romualdo Aranda.

It should be noted that on August 26, 1944, when the court's order (Annex B) approving the project of partition was issued in Sepcial Proceeding No. 5512, Juan Aranda was already dead so much so that his brother, Patricio Aranda, as the only surviving brother of the deceased Romualdo Aranda, was declared the only reservee to the aforementioned properties, excluding thereby his deceased brother, Juan Aranda.

As a result thereof, this instant action (before us on appeal) was filed by Juan Aranda's son, plaintiff Urbano Aranda, on March 31, 1955, seeking the annulment of the aforementioned project of partition, as well as the court *a quo's* order of August 26, 1944.

The court *a quo* in dismissing plaintiff's complaint ruled that its order of August 26, 1944 had already become final and could not be questioned by plaintiff as he and his father did not intervene in Special Proceeding No. 5512 and failed to appeal from said order within the statutory period; and even if there had been such intervention and timely appeal from the aforementioned order, this instant action would not prosper either because plaintiff, not being a third degree relative counted from Filomena Aranda, could not have been a reservee to the aforementioned properties under the provisions of Article 811 of the Old Civil Code of Spain (now Article 966 of the New Civil Code).

Plaintiff appealed therefrom and assigned the following eleven alleged errors committed by the court *a quo*, to wit:

"1. The lower court erred in not appreciating the fact that Juan Aranda died on August 23, 1943, or after December 17, 1937, when the reservation arises.

"2. The lower court erred in declaring that Filomena Aranda was the propositus.

"3. The lower court erred in not declaring that the appellant is the reservee under Article 811 of the Old Civil Code.

"4. The lower court erred in applying the Cabardo case as that is about inheritance while the present case is about reservation.

"5. The lower court erred in declaring that appellant cannot represent his father, Juan Aranda.

"6. The lower court erred in declaring that appellant is within the 4th civll degree from "whom the reservable property originally came from".

"7. The lower court erred in declaring that appellant's complaint lack causes of action; that appellant's cause of action is barred by a prior judgment or order and in declaring that the cause of action is barred by the statute of limitations.

"8. The lower court erred in making (2) separate decisions in this case, thus making appellants herein appeal more costly.

"9. The lower court erred in not declaring that appellant is a reservee to the properties left by Romualdo Aranda.

"10. The lower court erred in not finding that no rights of appellant as reservee were disposed of in Special Proceeding No. 5512 of the Court of First Instance of Bulacan.

"11. The lower court erred in declaring that appellant should have set aside the order dated August 26, 1944, in Special Proceeding No. 5512 of the Court of First Instance of Bulacan within six (6) months from said order."

The first ground for dismissing the complaint, namely the failure of plaintiff's father, Juan Aranda, to intervene in Special Proceeding No. 5512 and his and plaintiff's failure to appeal from the court's order of August 26, 1944, appears well taken. It appears that plaintiff did not file his motion to reopen the said proceeding until November 3, 1952, or eight years thereafter, and when this was denied, he filed the instant action only on June 13, 1954.

The other ground for the court *a quo's* dismissing the aforementioned complaint was that plaintiff is not a legitimate relative within the third degree from the "propositus", Filomena Aranda.

Article 811 of the old Spanish Civil Code is applicable to three kinds of succession—testate, intestate and mixed.

Article 891 of the New Civil Code of the Philippines provides:

"The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came."

It is evident therefrom that the requisites of "reserva troncal" are:

1. Property received by a descendant by gratuitous title from an ascendant or from a brother or sister.

2. Said descendant died without issue.

3. The property is inherited by another ascendant by operation of law.

4. Existence of relatives within the third degree belonging to the line from which said property came.

(cited in Padilla's Civil Code Volume 2, page 281, 1953 edition).

There is no question that the aforementioned legal provisions are applicable to the case at bar. While there are three theories regarding the nature of "reserva troncal" or the right of the reservor (reservista) namely, that the reservor is merely a *usufructuary, trustee* or *absolute owner,* it is the consensus under our civil law to adopt the last concept as prevailing. In other words, the reservor is deemed an absolute owner, his right being subject only to a resolutory condition, namely, the existence of third degree relatives as reservees at the time of the reservor's death (Padilla's comments on Article 891, page 283, *supra*).

It is true, as contended by plaintiff-appellant, that his father, Juan Aranda, was sitting on the same plain level as his brother, Patricio Aranda, because both were brothers of the deceased Romualdo Aranda, and Juan Aranda was, therefore, entitled to be a reservee, as well as his brother Patricio; this under the provisions of Article 811 of the New Civil Code (Edroso v. Sablan, 25 Phil. 295), even if, as the court *a quo* correctly concluded, the counting should proceed from Filomena as the "propositus". This notwithstanding, for reasons which do not clearly appear of record, Juan Aranda failed to intervene and assert his right in the project of partition, as well as on the court *a quo's* order of August 26, 1944 within the statutory period. His right to be a reservee, however, was in the highest degree, *personal,* and "for the exclusive benefit of designated persons who are relatives within the third degree of the persons from whom the reservor's property came" (Florentino *vs.* Florentino, 40 Phil., 480–496, citing Article 811 of the old Civil Code). While, therefore, Juan Aranda was such reservee, after his death on August 23, 1943 his descendants (one of whom is plaintiff herein) did not inherit from him by right of representation (Article 970 of the New Civil Code) because these descendants become relatives of the 4th degree.

Juan Aranda's right was strictly personal and was not taken advantage of by him when he had all the opportunities to do so, as he must have known under the circum-

stances as an interested party to the project of partition, and not having done so, he is deemed to have renounced his strictly personal right, so much so that when he died, such right ceased to exist.

The reason for this is, because under Article 971 (*supra*), "the representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded". As has been decided in Edroso *vs.* Sablan (25 Phil., 295) as well as in Florentino *vs.* Florentino (40 Phil., 480), the right of representation cannot be alleged when the one claiming the same as a "reservatorio" of the property is not a relative within the third degree belonging to the line whence the property proceeds, inasmuch as the right conceded by the Civil Code in Article 811 is, "in the highest degree, personal and for the exclusive benefit of the designated persons who are relatives within the third degree of the person from whom the reservor's property came". It is clear that the person from whom the reservor's property came was Filomena Aranda, and not her father, because the right to such a reservation was born only from the time Filomena inherited from him, and, moreover, she was at the end of that line and is called "propositus".

The only exception to the prohibited right to represent is in the case of nephews of the deceased person (Filomena in our case) from whom the reservor's property came. These "reservatorios" (her nephews) have the right to represent their ascendants—fathers and mothers of said deceased person and consequently relatives within the third degree in accordance with Article 811 of the New Civil Code (Florentino *vs.* Florentino, 40 Phil., 480). And in Jardin, et al, *vs.* Villamayor (72 Phil., 392) 4th degree relatives are not included in the reservation and plaintiff in the instant case is such a 4th degree relative.

There is one more reason why Filomena Aranda and not her father, Romualdo Aranda, had to be the "propositus", that is, the starting point in counting the degree of legitimate relationship, and that is, because of the legal provision that "there are as many degree as there are generations, or persons *excluding the progenitor*". (Article 966, New Civil Code.) Some authors are of the opinion that the third degree should be counted from the source of the property—the original ascendant or brother or sister who gives her property to her descendants by gratuitous title. However, in our jurisdiction, it is the rule that in counting the third degree, the "propositus"—the descendant who receives the property gratuitously and who dies—should be the starting point. For in the case of Cabardo *vs.* Villanueva (44 Phil., 186) it has been decided that the "propositus" is the person upon whom the prop-

erty last devolved by descent; in the instant case, Filomena Aranda.

It is plaintiff-appellant's contention that this ruling in the Cabardo case on inheritance, should not be followed in the instant case—which deals with reservation. It would be the height of sophistry to establish a line of distinction on the nature of these two cases for, verily, one or the other is absorbed in questions regarding inheritance and reservation.

It would thus appear unnecessary to discuss each and every one of the aforementioned assignment of errors, as the questions profounded therein are argued and disposed of in the preceding paragraphs.

The decision of the court *a quo*, being in accordance with the facts and the laws applicable, is hereby affirmed *in toto*. Plaintiff's complaint is hereby, therefore, dismissed with the costs against plaintiff-appellant.

Martinez and *Santiago, JJ.*, concur.

Judgment affirmed.

[No. 22740-R. August 27, 1958]

ASSOCIATED INSURANCE & SURETY CO., INC., petitioner, *vs.* HON. JOSE R. QUERUBIN, in his capacity as Judge of the Court of First Instance of Iloilo and MACARIO OFILADA, in his capacity as City Sheriff of Manila, respondents.

1. CRIMINAL PROCEDURE; BAIL BONDS; JUDGMENT RENDERED ON BAIL BOND SUBSEQUENT TO SURRENDER OF ACCUSED NOT PROVISIONAL BUT FINAL.—As a general rule, judgments rendered upon the failure of the sureties to produce and surrender the principal within the period fixed in the order of forfeiture are only provisional, subject to revocation or amendments, the theory being that the breach of the undertaking by the sureties is not complete, for the sureties may finally comply with their obligation by securing the arrest and production in court of the principal. This rule, however, is not applicable to cases in which the judgments on the bonds are rendered subsequent to the surrender of the accused to the proper authorities. In such cases, the judgments are final, for the breach of the undertaking by the sureties is complete; there is nothing more which they could do to undo or mitigate their fault.

2. ID.; ID.; ID.; APPEAL THEREFROM MUST BE PERFECTED WITHIN THE REGLEMENTARY PERIOD.—An appeal from a judgment on a bond subsequent to the surrender of the accused must be perfected within the reglementary period. Once such judgments become final and executory, an appeal therefrom can no longer be entertained. Sound public policy demands that there should be some stability in judicial decisions and an end to court litigations.

ORIGINAL ACTION in the Court of Appeals. Mandamus with preliminary injunction.

The facts are stated in the opinion of the Court.

M. Perez Cardenas, for petitioner.

Assistant Fiscal Abelardo M. Dayrit, for respondent Sheriff of Manila.

Judge Jose R. Querubin, for his own behalf.

NATIVIDAD, *J.:*

This action of mandamus with preliminary injunction, originally brought in this Court, has for its purpose to secure an order commanding the respondent Judge to give due course to the appeal taken by the petitioner from a judgment entered in Criminal Case No. 2703 of the Court of First Instance of Iloilo, People of the Philippines, plaintiff, *vs.* Jose Maria Esquillo, defendant, which confiscate in part the bail bond filed by the defendant for his liberty pending trial, and to enjoin in the meantime the execution of said judgment. As prayed for in the petition, a writ of preliminary injunction was issued enjoining the respondents from executing said judgment until further order from this Court.

The case has been submitted on the pleadings filed by the parties.

It appears that Jose Maria Esquillo was accused in Criminal Case No. 2703 of the Court of First Instance of Iloilo of the violation of Article 172, paragraph 2, of the Revised Penal Code. He was released from custody pending trial upon a bail bond for the sum of ₱10,000 which was subscribed by the petitioner herein, Associated Insurance & Surety Co., Inc. When the case was called for hearing, the accused Jose Maria Esquillo failed to appear, notwithstanding the fact that his bondsman was duly notified of said hearing. For this reason, on September 18, 1956, the trial court declared said bail bond confiscated, ordered the arrest of the defendant and gave the surety, the herein petitioner, a 15-day period to produce the person of the principal.

On November 19, 1956, the petitioner filed in the case a motion wherein it asked that the order of confiscation of the bail bond in question be lifted and that said bail bond cancelled, on the ground that its inability to produce in court the person of the defendant on the hearing of the case on September 18, 1956, was due to the fact that on that date the latter was confined in the City Jail of the City of Manila. The trail court, in an order dated November 27, 1956, denied this motion, and ordered that a writ issue for the payment of the full amount of the bond.

On December 18, 1956, the petitioner filed another motion again asking for the lifting of the order of confiscation of that bond and its cancellation, based practically on the same grounds alleged in its former motion, plus an allegation that the apprehension of the accused was due to its efforts and sacrifice. Acting on this motion, the trial court, in an order dated December 22, 1956, set aside its order of November 27, 1956, modified that of September 18, 1956, by reducing the amount confiscated of the bond to ₱3,000.00, and ordered that a writ of execution issue only for this amount. The writ of execution contemplated in this order was issued on December 22, 1956.

On October 24, 1957, the petitioner again filed another motion for the cancellation of its bail bond and the setting aside of the order of execution above referred to, on the ground that as the accused was finally arrested and surrendered to the proper authorities thru its efforts and sacrifice, it has fulfilled its obligation under the bail bond. This third motion was denied by the trial court in an order dated November 9, 1957, on the ground that it was based practically on the same grounds alleged in petitioner's second motion of December 18, 1956.

Served with notice of the above order, on November 18, 1957, the petitioner filed its notice of appeal from the order of November 9, 1957, and an appeal bond, and on

November 21, 1957, a motion asking that the running of the period for the filing of its record on appeal be suspended until after it had received the copies of the pleadings it had requested from the clerk of court as the surety's records of the case had been lost. However, on December 5, 1957, the petitioner, without waiting for the court's action on his motion, filed its record on appeal.

In an order dated December 7, 1957, the trial court denied petitioner's motion of November 21, 1957, on the ground that the order of December 22, 1956, which reduced the confiscated amount of the bail bond to ₱3,000.00, was unappealable as it was already final and executory. A motion for a reconsideration of this order was also denied.

Petitioner contends that the respondent Judge, in refusing to approve the record on appeal it has filed in Criminal Case No. 2703 of the Court of First Instance of Iloilo and to give due course to its appeal from the order therein entered on December 7, 1957, failed to perform a duty resulting from his office which is specifically enjoined by law. Hence, a writ of mandamus to compel him to perform that ministerial duty should issue. It is claimed that as its notice of appeal clearly states that the petitioner was appealing from the order of the respondent Judge of December 7, 1957, and not from that of December 22, 1956, and that whether petitioner's appeal be considered as taken from either the order of December 7, 1957, or that of December 22, 1956, the same should be given due course for said orders are only provisional and not final, and consequently appealable at any time. In support of this contention, petitioner invokes the following doctrine laid down in the case of People *vs.* Antonio Tan, 54 Off. Gaz. 989:

"It is urged by the Solicitor General that as the judgment against the surety had become final and executory, the court had already lost control over its judgment, especially as a writ of execution had already been issued, as in this case. The discretion lodged in the courts to reduce judgments against sureties on bonds of the accused in criminal cases has always been recognized. (People *vs.* Reyes, 48 Phil., 139; People *vs.* Calabon, 53 Phil., 945; People *vs.* Alamada, G. R. No. L-2155, May 23, 1951; People *vs.* Puyal, G. R. No. L-8091, February 17, 1956.) Similar cases have come to us in this session (Baguio, April and May, 1957; see People *vs.* Daisin, et al., G. R. No. L-6713, April 29, 1957). The principle underlying the above decisions does not seem to be well understood. Hence, the need that we explain the legal foundation for the discretionary power of courts to reduce judgments of confiscation of bonds of accused in criminal cases.

"It will be noted that under Section 2 of Rule 110 the obligation of the bondsman before conviction is "that the defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial." If a bondsman or surety fails to produce the person of the accused at the time of

the arraignment or trial, it does not necessarily follow therefrom that he (surety or bondsman) has committed a complete and irrevocable breach of his obligation; for he may at a later date be able to have the accused arrested and surrendered to the court to be dealt with according to law and thereby still comply with his obligation. The aim of the law is to have the accused brought to court at any cost and at any time, even after the confiscation of his bond, in order that he may be made to answer for the offense with which he is charged, and consistent therewith the policy of the courts has been to encourage bondsmen or sureties to help in bringing the accused to court even after a previous failure and bond confiscation. So that if at a subsequent date (after confiscation), the bondsman finally surrenders the person of the principal, he thereby ultimately complies with his obligation, even if he had failed to do so at an earlier time. In this case there has been a failure to produce at a previous time, it is true, but there has been an ultimate compliance with his obligation on the bond.

"Therefore, upon failure of the bondsman to produce the principal at a date set by the court, it can not be stated that there is already a complete and irrevocable breach of the bond; neither does it follow that the judgment then rendered against the bondsman to pay the amount of the bond is a final and irrevocable judgment. The judgment of confiscation rendered is merely provisional in character, subject to the contingency that the bondsman may finally secure the arrest of the principal and the production of his person in court and thereby ultimately comply with his obligation. If after the provisional judgment, the bondsman succeeds in getting the accused to court, the happening of the contingency resolves his full liability under the confiscated bond, and the court is given the power to set aside or modify the previous judgment.

"The above is the explanation for the rule that courts may modify judgments of confiscation of bonds even if the ordinary period for orders and judgments to become final had long passed. The happening of the fact of compliance with the obligation gives jurisdiction to the court to set aside the previous order of confiscation and the order of execution." pp. 990–991.

The respondent judge, on the other hand, contends that the appeal interposed by the petitioner was in effect an appeal from the judgment of December 22, 1956, which confiscated in part the bail bond filed in that criminal case, and that as this judgment has already become final and executory, an appeal therefrom could no longer be entertained.

We do not share petitioner's view. The judgment of confiscation of bail bonds filed in criminal cases contemplated in the doctrine laid down in the Tan case evidently are those judgments rendered by trial courts upon failure by the sureties to produce the body of the accused within the period fixed in the order of forfeiture. The Supreme Court could not have intended the doctrine to cover judgments on the amount of bail bonds rendered after the surrender of the accused to the proper authorities. And the reason for this is obvious. If judgments rendered upon the failure of the sureties to produce and surrender the principal within the period fixed in the order of forfeiture have been declared to be only provisional, subject to re-

vocation or amendments, it was because the breach of the undertakings by the sureties was not complete. The sureties may finally comply with their obligation by securing the arrest and production in court of the principal. This situation does not obtain in judgments rendered on bonds subsequent to the surrender of the accused to the proper authorities. In such cases the breach of the undertaking by the sureties is complete. There was nothing which they could do to undo or mitigate their fault. Moreover, to hold that the doctrine in the Tan case includes these judgments would be to indulge in the absurd assumption that the Supreme Court disregarded the fundamental requirement of sound public policy that there should be some stability in judicial decisions and an end to court litigations.

"Public and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies. To fulfill this purpose and to do so speedily, certain limits, more or less arbitrary, have to be set up to spur on the slothful." Dy Cay *vs.* Crossfield and O'Brien 38 Phil., 521, 526.

As we analyze the facts, the untenableness of petitioner's position becomes apparent. We agree with the respondent Judge that the appeal in question is from the judgment of December 22, 1956, and not from the order of December 7, 1957, as pretended by the petitioner. The order of December 7, 1957, is not a final judgment which gives an end to the litigation. It is a provisional order merely incidental to the judgment of December 22, 1956, which is the court's action that finally disposed of the case. That order did not supersede said judgment. We likewise agree with the respondent Judge that the petitioner failed to perfect its appeal from the judgment of December 22, 1956, within the period prescribed by law. While the pleadings do not disclose the date service of notice of that judgment was made on the petitioner, there can be no question that it received such service of notice on or prior to January 28, 1957, for on that date it filed a motion for a reconsideration thereof. This motion, being one which partakes of the nature of a motion for new trial, suspended the running of the period for perfecting an appeal from said judgment, but it may be assumed that said period commenced to run again beginning March 1, 1957, for, while the records do not show when notice of the order denying said motion was served on the petitioner, it must be presumed that official duty has been regularly performed, and giving allowance for distances and means of communication, petitioner must have received notice of such order within 15 days after its issuance. The petitioner filed its notice of appeal and appeal bond only on November 18, 1957, and its record on appeal only on December 5, 1957,

or over 8 months from the date the period for perfecting an appeal from that judgment expired. People *vs.* Loredo, 50 Phil., 209. Even disregarding, therefore, the defects in form noticed by the respondent Judge in petitioner's record on appeal, which are subject to correction, the latter's refusal to approve petitioner's record on appeal and to give due course to the latter's appeal is in accordance with law.

FOR THE FOREGOING, we hold that the petitioner has failed to make sufficient showing to entitle it to the remedy herein prayed for. The petition filed in the instant case is, therefore, hereby dismissed, and the writ of preliminary injuction heretofore issued, dissolved, with the costs taxed against the petitioner.

IT IS SO ORDERED.

Sanchez and *Angeles, JJ.*, concur.

Petition dismissed.

[No. 17995-R. August 29, 1958]

DIRECTOR OF LANDS, petitioner, *vs.* ANTONIA ABACIAL ET AL., claimants. EUFRECIDO CALABIA, claimant and appellee, *vs.* ALBERTO CABARDO, claimant and appellant.

CADASTRAL COURT; JURISDICTION; LAND COVERED BY CERTIFICATE OF TITLE ISSUED PURSUANT TO HOMESTEAD PATENT NOT PROPER SUBJECT OF CADASTRAL PROCEEDINGS.—A homestead patent issued and registered becomes irrevocable and enjoys the same privileges as Torrens titles issued under the Land Registration Act (Aquino *vs.* Director of Lands, 39 Phil. 850; Manalo *vs.* Lukban et al., 48 Phil. 973). It is indefeasible, imprescriptible and unassailable. And when a certificate of title has been issued pursuant to a homestead patent granted by the government, the land thus registered and covered by the title can not again be the subject of registration in a cadastral proceeding without the consent of the owner, and the title issued in the latter proceeding in violation of this principle is null and void and should be cancelled. (El Hogar Filipino *vs.* Olviga, 60 Phil. 17)

APPEAL from a judgment of the Court of First Instance of Lanao. Apostol, *J.*

The facts are stated in the opinion of the Court.

Alfredo Marigomen and *Jesus Quijano*, for claimant and appellant.

Francisco D. Boter, for claimant and appellee.

ANGELES, *J.:*

In Cadastral Case No. N–2, G. L. R. O. Cadastral Record No. N–35, before the Court of First Instance of Lanao, Eufrecido Calabia and Alberto Cabardo filed their anwers, each claiming Lot No. 184–A. Eufrecido Calabia claimed that his ownership over the contested lot is evidenced by a homestead patent and original certificate of title issued in his name; while Alberto Cabardo claimed that he had filed a sales application over a bigger parcel of land covering and including Lot No. 184–A, the lot in question.

After hearing both sides, the lower court on September 21, 1953, rendered the following decision:

"From the evidence submitted, it appears that Lot No. 184 is a public land wherein conflicting claims have been filed with the Bureau of Lands by Eufrecido Calabia and Alberto Cabardo, homestead applicant and sales applicant, respectively. During the pendency of this conflict, Certificate of Title No. P–324 Homestead Patent No. V–11461, however, appears to have been issued on May 13, 1952 in favor of Eufrecido Calabia over a portion of this lot, known as Lot No. 184–A. The evidence submitted also shows that the conflict between homestead applicant Calabia and sales applicant Cabardo is still pending resolution by the Bureau of Lands.

"WHEREFORE, Lot No. 184 is hereby declared public land, subject to any rights that may have been acquired by Eufrecido Calabia under his Original Certificate of Title No. P–324, Exhibit 'A'."

To the foregoing decision Eufrecido Calabia excepted and filed a motion for reconsideration on the following grounds:

"1. That this Hon. Court acting in his capacity as Cadastral Court has no jurisdiction to declare Lot No. 184–A *a public land* because said Lot No. 184–A pls–35 is already decreed—a titled property—and covered by Original Certificate of Title No. P–324 issued by the Register of Deeds of Dansalan City on May 13, 1952, in pursuant to Homestead Patent No. V–11461 issued on April 14, 1952.

"2. That after the lapse of more than one year before the date of the patent was issued the Certificate of Title issued in pursuant to Section 122 of Act 496 in relation to Section 107 of Act 141 as amended is unassailable, incontrovertible and indefeasible; consequently, the Cadastral Court is without jurisdiction to entertain any objection or opposition on matters falling within the exclusive jurisdiction of the Land Department hence its order of September 21, 1953, *declaring Lot No. 184–A a public land* is null and void and of no effect.

"3. That a public land applicant, like Alberto Cabardo, who claimed to have filed a sales application for Lot No. 184–A, pls–35 has no personality nor capacity to attack, in any court of justice, the certificate of title issued by the Land Department in pursuant to Act 141 and the standing Rules and Regulations on the matter hence the order of this Cadastral Court declaring Lot No. 184–A a *Contested Lot* and later a *Public Land* upon the evidence presented by said Alberto Cabardo when such evidence should not have been allowd is in excess of its jurisdiction."

Alberto Cabardo opposed the motion for reconsideration for the following reasons:

"(1) That Act No. 2259, otherwise known as the Cadastral Act, vests in the Cadastral Court the power to settle and adjudicate titles to any lands in the Philippines, in conjunction with Section 58 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as distinguished from Act No. 496, otherwise known as the Land Registration Act, where the Land Registration Court merely confirms titles already existing on lands;

"(2) That the proceeding at bar is not a petition for review of a decree of registration under Section 38 of Act No. 496, but is a cadastral proceeding pursuant to Section 53 of the Public Land Act and to the Cadastral Act; and

"(3) That the declaration made by this Honorable Court that Lot No. 184, Pls–35 is public land is justified by the evidence, documentary and testimonial, for herein oppositor Cabardo, which indubitably show that the Land Department of the Government has yet to take final action and determination on the existing conflict of claims of both movant and oppositor who are public land applicants of the lot in question."

On June 10, 1954, the lower court entered the following order:

"For the reasons therein stated, supported by the declaration in open Court under oath by Atty. Demetrio F. Sira, the motion for reconsideration of the decision rendered by this Court on September 21, 1953 filed by the movant Eufrecido Calabia is hereby *granted* and the decision of this Court declaring Lot No. 184 as a public land is hereby *set aside*. Let this case be set for hearing

on June 14, 1954, at 8:00 o'clock, a.m., with proper notification to the parties."

On December 20, 1954, the court below rendered the following decision:

"It appearing that lot No. 184–A (a portion of Lot No. 184, Cadastral Case No. N–2, G. L. R. O. Cadastral Record N–35), is already covered by Homestead Patent No. V–11461 dated April 14, 1952, and recorded according to Original Certificate of Title No. P–324 dated May 13, 1952, issued in the name of claimant Eufrecido Calabia, married to Maura Delema, Filipino citizen, and residing at Maranding, Kapatagan, Lanao, Philippines, said certificate of title having been surrendered to this Court by said claimant; and it appearing further, that the technical description of the lot appearing therein is already in accordance with that of the cadastral plan (Psu–35), said certificate of title is hereby confirmed in the name of its registered owner, and the Clerk of Court is likewise ordered to return said certificate of title to its registered owner, Eufrecido Calabia.

"The answer filed by Alberto Cabardo as it pertains to the portion of Lot No. 184, known as Lot No. 184–A, is hereby ordered dismissed."

Hence, the instant appeal.

The decision appealed from is assailed on the ground that the lower court did not make any finding "that conflicting claims over lot No. 184 have been filed with the Bureau of Lands which contest is still pending resolution by the Diretcor of Lands." Appellant banks on Exhibits 1, 2 and 3 and the testimony of District Land Officer Alfredo C. Zerrudo, one of the witnesses presented at the hearing held in connection with the lot in question. Exhibit 1 is a letter written by Alfredo G. Zerrudo to Alberto Cabardo on August 18, 1953, requesting the latter to maintain the *status quo* on lot No. 184 pending final decision of the case by the Director of Lands. Exhibit 2 is a letter of the Chief of the Division of the Bureau of Lands, addressed to Zerrudo, directing the latter to act and dispose of the case between Alberto Cabardo, on the one hand, and Eufrecido Calabia and Julio Lazola, on the other, with respect to Lots Nos. 184–A and 184–B. It was written on May 20, 1953. Exhibit 3 is a letter bearing date of June 19, 1953, written by Zerrudo to Cabardo, requesting the latter to call at his office and bring the testimonies taken in connection with an investigation "which you alleged was conducted on August 22, 1951", for a conference relative to the sales application.

The testimony of Zerrudo which is relied upon to support the first error is quoted in appellant's brief as follows:

"Q.—According to the title of this lot, the same has been subdivided. Do you have knowledge as to the subdivision of this lot No. 184?

"A.—As I have just stated, I have just known of this only now. (t.s.n., p. 15.)

* * *

"Q.—In other words, Atty. Zerrudo, in the records of the District Land Officer, there exists a conflict between Alberto Cabardo, on one hand, and Eufrecido Calabia and Julia Lasola, on the other?

"A.—Yes, sir, there is." (t.s.n., p. 24.)

* * *

"Q.—In case of conflict, Atty. Zerrudo, over a certain lot, is it not the procedure of the Bureau of Lands to withhold action on application of the conflicting claimants pending the result of the investigation made by a representative of your office?

"A.—It has always been our procedure to withhold action on application pending termination of all standing conflicts and case on the land.

"Q.—In this particular case, was the procedure you just stated followed by the Bureau of Lands?

"A.—Well, as I said, that is our procedure, but in this case, I think it was only last week when I saw this title, I never knew of this before.

"Q.—In other words, no record exists in your office showing that a title has been granted to Eufrecido Calabia?

"A.—As far as my memory does not fail me, I do not remember of any patent issued in favor of this Eufrecido Calabia." (t.s.n., p. 25.)

In Our opinion, neither the documents Exhibits 1, 2 and 3 nor the testimonies aforequoted sustain the claim of the appellant. It must be remembered that the lot in question is already covered by Homestead Patent No. V-11461 dated April 14, 1952 and Original Certificate of Title No. P-324 dated May 13, 1952, issued in the name of appellee Eufrecido Calabia. Said exhibits have no material bearing to the case. That he was not aware that the patent and title have already been issued is of no moment, for his lack of knowledge cannot defeat or invalidate the title.

The declaration of Zerrudo on cross-examination which were quoted by appellant in his brief show on the contrary that the conflict over lot No. 184-A has already been terminated. If as Zerrudo admitted, it has always been the policy of the Bureau of Lands to withhold action on an application pending termination of all standing conflicts on the land, what could be the meaning of the issuance of a homestead patent to applicant Eufrecido Calabia? Neither the patent nor the original certificate of title standing in his name has been impugned during the hearing of this case. The presumption is that the patent and the title have been issued in accordance with law.

But be that as it may, the vital question is whether the Court of First Instance of Lanao, acting as a cadastral court, can nullify the original certificate of title stand-

ing in the name of appellee Eufrecido Calabia, and declare the parcel of land covered thereby as a public land, like what appellant would want the Court below and Us to do.

Like We have stated, the lot in question is already covered by a homestead patent and original certificate of title in the name of appellee Eufrecido Calabia.

"Where a land was granted by the Government to a private individual as homestead, and the corresponding patent was registered and issued to the grantee, said land is considered registered within the meaning of the Land Registration Act, No. 496. (See Section 122, Act No. 496; Manalo *vs.* Lukban, et al., 48 Phil. 973.)

"The title to the land thus granted and registered may no longer be the subject of any inquiry, decision, or judgment in a cadastral proceeding." (Ibid.)

The homestead patent thus issued and registered becomes irrevocable and enjoys the same privileges as Torrens Titles issued under the Land Registration Act. (Aquino *vs.* Director of Lands, 39 Phil. 850; Manalo *vs.* Lukban, supra.) It is indefeasible, imprescriptible and unassailable. And when a certificate of title has been issued pursuant to a homestead patent granted by the Government, like in the case at bar, the land thus registered and covered by the title can not again be the subject of registration in a cadastral proceeding without the consent of the owner, and the title issued in the latter proceeding in violation of this principle is null and void and should be cancelled. (21 Hogar Filipino *vs.* Olviga, 60 Phil. 17.)

What then is the jurisdiction of the cadastral court of Lanao over the lot in question? The Supreme Court and this Court have circumscribed the power of the cadastral court to correcting technical errors in the description of the lands, if there be any. Said the Supreme Court:

"In a cadastral case the court has no jurisdiction to decree again the registration of land already decreed in an earlier land registration case and a second decree for the same land is null and void.

"The jurisdiction of the court in cadastral cases over lands already registered is limited to the necessary correction of technical errors in the description of the lands." (Pamintuan *vs.* San Agustin, 43 Phil. 558.)

And as this Court held:

"After the expiration of one year from the date the decree of registration of lands under the Land Registration Act is issued, the title to such lands is settled and unimpeachable. The same may not be impeached in another proceeding for registration, either ordinary or cadastral. The cadastral court has no jurisdiction to decree again the registration of lands previously registered under the Land Registration Act. Its jurisdiction in cases where lands already registered under the Land Registration Act

is included in a cadastral proceeding is limited to ordering the necessary corrections of technical errors in the description of the lands. (Manuel V. Say-Juco, et al., *vs.* Luis Francisco, CA-G.R. No. 9493-R. December 27, 1956.)

On the strength of the aforecited jurisprudence, the stand of appellant is clearly untenable. What he wanted the lower court to do was beyond its jurisdiction to perform, and the court *a quo* was correct in refusing to yield to appellant's demands. Assuming, for the sake of argument, that the conflict over lot No. 184-A in the Bureau of Lands has not as yet been settled, the recourse of appellant is against the Director of Lands for issuing a homestead patent during the pendency of the controversy, and he must exhaust the remedies in the Lands Bureau and not before the cadastral court.

In the order of the lower court dated December 20, 1954, however, We find that the *confirmation* of the title of appellee was decreed by the lower court. Evidently the court *a quo* meant that the title of appellee must be given force and effect. Instead of ordering the confirmation of the title, the lower court should have ordered the cancellation of the original certificate of title presented by the appellee and the issuance in its stead of a certificate of title under the cadastral proceeding in favor of the appellee. But the error in the word employed does not affect the substantial aspect of the case. It does not alter the fact that the patent and title of appellee must be honored, in the absence of a showing that it has been issued fraudulently and in violation of law, which proof is wanting in the case before Us.

WHEREFORE, the judgment appealed from is modified as above intimated, and as above modified it is hereby affirmed in all other respects, with costs against the appellant.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment modified.

[No. 19742–R. August 28, 1958]

TRANQUILINO F. CALICA, petitioner and appellee, *vs.* FLORENTINO G. LIBATIQUE, ET ALS., respondents and appellants.

1. CORPORATIONS; BOARD OF DIRECTORS; QUORUM.—As a general proposition, the directors of a corporation can not act in their individual capacity to bind the entity. They must act as a board duly assembled at a legal meeting. This rule is embodied in Section 33 of the Corporation Law. The weight of authority is to the effect that to have the requisite quorum, there must be present in the meeting a majority of all the members composing the board of directors. (Webster Loose Leaf Filing Co., D. C. N. J., 240 F. 779–784; 2 Fletcher Cyclopedia, p. 204–205; 144 Corpus Juris, p. 92).
2. ID.; ID.; ID.; MEMBERS OF THE BOARD ACTING WITHOUT THE REQUIRED QUORUM INDIVIDUALLY LIABLE; MANDAMUS; CASE AT BAR.—The dismissal of the petitioner from his position as manager, through a resolution approved by members of the Board of Directors of the corporation in a meeting convened without the required quorum was obviously the act of the individual members who attended said meeting, and there being no valid quorum in that meeting, the dismissal of the petitioner could not be attributed as the act of the corporation. The dismissal being illegal and not being the act of the corporation, mandamus will lie to reinstate petitioner to his position. Said individual members should be held individually liable for the salary due to said petitioner (Faunillan *vs.* Del Rosario et al., G. R. No. L–9447, August 23, 1956).

APPEAL from a judgment of the Court of First Instance of La Union. Flores, *J.*

The facts are stated in the opinion of the Court.

Florentino G. Libatique, for respondents and appellants.

Antonio P. Florendo and *Antonio G. Tabora,* for petitioner and appellee.

ANGELES, *J:*

These proceedings were commenced in the Court of First Instance of La Union, upon a petition by Tranquilino F. Calica for certiorari, prohibition and mandamus with preliminary injunction, against the seven respondents herein, the incumbent members of the board of directors of the Bauang (La Union) Farmers' Cooperative Marketing Association, Inc., seeking the annulment of the resolution passed by the said board of directors on May 25, 1956, ousting the petitioner as manager of the aforementioned association, on the ground that the dismissal of the petitioner was illegal and wrongful and with grave abuse of discretion. Petitioner also prayed for reinstatement to the position of manager, and for damages.

After trial, the lower court rendered a decision on October 27, 1956, the dispositive portion of which reads thus:

"In view of the foregoing, the Court hereby declares that the Resolution No. 58, s. 1956, removing the petitioner is not valid and the respondents are ordered to reinstate the petitioner as manager, who shall be paid his (petitioner's) monthly salary of ₱150.00 from May 26, 1956 when he was unlawfully ousted, with costs against the respondents."

From said judgment, respondents appealed.

Upon a reading of the pleading and review of the evidence, and as succinctly summarized in the trial court's decision, the basic facts of the case which are not seriously disputed by the parties are as follows:

The Bauang (La Union) Farmers' Cooperative Marketinp Association, Inc., hereinafter referred to as the Bauang Cooperative Association, was organized under the provisions of Act No. 3425, as amended by Act No. 3872. As provided in the law, said association shall be operated primarily for the mutual benefit of the members, as producers, and shall aim to promote, foster, and encourage the orderly marketing of agricultural products through cooperation; to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of agricultural products. (Sec. 1.) Its affairs shall be managed by a board of not less than five directors, elected by the members, or stockholders entitled to vote. (Sec. 18.) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members, or stockholders entitled to vote, in that district to fill the vacancy. (Sec. 19.) The by-laws may provide for the appointment by the board of directors, of a manager who need not be a member or stockholder, and may allot to such manager any or all of the functions and powers of the board of directors subject to the general direction and control of the board. (Sec. 20.) And the association shall have the powers enumerated in the law, and such general powers of ordinary business corporations organized under the Corporation Law, Act Numbered One Thousand Four Hundred Fifty-nine, as amended, as are not inconsistent with any of the provisions of said Act. (Sec. 6.)

The petitioner was employed as manager of the Bauang Cooperative Association by its board of directors on December 7, 1955, in accordance with an employment contract signed by its president and the petitioner. On March 17, 1956, the board of directors passed Resolution No. 27, series of 1956, suspending the petitioner from the position of manager pending the investigation of the charges filed against him and authorizing the president, Florentino G. Libatique, and director Pedro Subála to bring and file charges with

the ACCFA district director, with the claim that the petitioner had wilfully abused his discretion as manager; that he had an unliquidated cash shortage as former treasurer; that he incurred losses in the tobacco trading during the time he was manager; that he engaged and still is engaging in a business similar to that handled by the Bauang Facoma; and that he was not observing office working hours as required of him by his employment contract. It is also claimed in the resolution that because of these charges, the board of directors lost its confidence in the petitioner; hence, his immediate suspension as manager was asked pending the investigation of the charges.

On May 1, 1956, in a special meeting of the board of directors, a resolution was passed authorizing the members of the body to form a delegation to go to the ACCFA Central Office for the purpose of finding out from the Administrator the action taken by the latter against the petitioner. It seems that no action had as then been taken by the proper authority on the charges filed against the petitioner. On May 25, 1956, the board of directors passed resolution No. 58, series of 1956, removing the petitioner from the office of manager of the Bauang Cooperative Association. On the following day, May 26, 1956, petitioner was advised of such removal which was to take effect on the date the resolution was passed.

Respondents-appellants have assigned four errors. The first three errors revolve around the question of whether or not the writs of certiorari, prohibition and mandamus will lie; and the fourth error deals with the holding of the trial court that the resolution passed by the board of directors on May 25, 1956 was invalid for the reason that it was passed in a meeting of the board without the required quorum.

As We view the facts of the case, the paramount question that should first be decided is whether or not the resolution passed by the board of directors on May 25, 1956, dismissing the petitioner as manager of the association, is valid.

The power to remove goes with and is a necessary incidence of the power to appoint. The petitioner was appointed manager of the association by the board of directors. In the employment contract signed by the president of the association and the petitioner, it is stipulated that the manager may be removed only for cause.

As a general proposition, the directors of a corporation can not act in their individual capacity to bind the entity. They must act as a board duly assembled at a legal meeting. This rule is embodied in the by-laws of the association herein involved and in Section 33 of the Corporation Law which provies that "A majority of the directors shall constitute a quorum for the transaction of corporate busi-

ness, and every decision of a majority of the quorum duly assembled at a board shall be valid as a corporate act." The weight of authority is to the effect that to have the requisite quorum, there must be present in the meeting a majority of all the members composing the board of directors.

"Where the by-laws of a corporation did not fix the number required for a quorum, a majority of the directors constitute a "quorum". In re Webster Loose Leaf Filing Co., D. C. N. J., 240 F. 779, 784.

"Unlike the rule in the case of stockholders' meetings, in the absence of provision to the contrary in the charter or by-laws, a majority of the directors or trustees is necessary, and is sufficient to constitute a quorum and to transact business at meetings of select bodies such as boards of directors or trustees. Less than a majority cannot meet and bind the corporation by any act or resolution, unless expressly authorized. This rule is often reiterated by statute, provision in the charter or by-law. Half of the directors is not a quorum. 2 Fletcher Cyclopedia, p. 204–205.

"The fact that there are vacancies in the board does not prevent the remaining directors, if they constitute a quorum, from holding lawful meetings and transacting the company's business. *The requisite quorum is a majority of the entire board, as it would be constituted if all the vacancies were filled, and not a majority of the board as it remains with the vacancies unfilled.*" 144 Corpus Juris, p. 92. (Italics supplied.)

Under the by-laws of the Bauang Cooperative Association, it is provided that the business of the corporation shall be administered by a board of directors of fifteen (15) members. On May 25, 1956, as the records show, there were only eight (8) incumbent and qualified members of the board of directors, because the seven other positions of the membership of the board were vacant. Seven members of the board had resigned, and their positions have not been filled up in accordance with the procedure laid down in the by-laws. Likewise evident is the fact that in the board meeting held on May 25, 1956, which was convened as a special meeting, there were only seven (7) members present. One of the eight incumbent members, Abelardo Quimson, was absent. True indeed, that in Resolution No. 58 in question, dismissing the petitioner from the position of manager of the association, the seven members present unanimously voted for the approval thereof. It is obvious, however, that the resolution was not and could not have been a valid corporate act because there was lacking the necessary quorum in the meeting in which it was passed. To constitute a legal quorum for the holding of a valid corporate meeting, there should have been eight (8) members present, because the board of directors was composed of fifteen (15) members. In the instant case there were only seven members present at that particular meeting. Hence, the approval of the resolution in question was contrary to the by-laws of the corporation and is not valid. It was not a corporate act of the corporation, because as already stated,

the board of directors in transacting the business of the corporation must act as a board at a legal meeting where there is present the required quorum.

With the view that We take of the case that there was not the requisite quorum in the special meeting of the board of directors during which the resolution in question was approved, the inevitable conclusion is that the dismissal of the petitioner was not valid, and it was not a corporate act emanating from the corporation itself through its board of directors. The dismissal of the petitioner was obviously the act of the individual members who attended said special meeting, and there being no valid quorum in that meeting, the dismissal of the petitioner could not be attributed as the act of the corporation. And in the light of the decision of the Supreme Court in the case of Faunillan *vs.* Del Rosario et al., G. R. No. L–9447, August 23, 1956, the seven respondents herein who approved the resolution in question by virtue of which the petitioner was dismissed from his position as manager of the association, should be held individually liable for the salary due to said petitioner from May 26, 1956 when he was ousted and dismissed as such manager. As We read the record of the case, We can not fail to observe the fact that the petitioner sought to recover the damages representing the salaries not received by him from the day of his dismissal against the seven directors, respondents herein, because the record is plain that the Bauang (La Uuion) Cooperative Marketing Association, Inc., is not made a party respondent in this case, evidently evincing that the purpose of the petitioner with respect to his claim for damages is to recover it from the said individual members of the board and not against the corporation.

The dismissal of the petitioner being illegal and not being the act of the corporation, obviously said petitioner is entitled to be reinstated to the position of manager of the corporation. As between the corporation and the petitioner, the latter is still the duly appointed and acting manager of the corporation, hence, mandamus will lie.

The foregoing discussion makes it unnecessary to dwell on the other questions.

WHEREFORE, and finding no error in the judgment appealed from, the same is hereby affirmed with costs against the appellants.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment affirmed.

[No. 14587-R. August 29, 1958]

ANTONINA OLIVEROS, plaintiff and appellee, *vs.* GABRIEL OLIVEROS, ET AL., defendants and appellants

1. COURTS; JURISDICTION; JUDGMENT AGAINST DEFENDANT WHO HAS NOT BEEN SERVED WITH SUMMONS AND COPY OF AMENDED COMPLAINT NULL AND VOID.—A trial court does not acquire jurisdiction to render judgment in a case where the party defendant was not served with summons and copy of the amended complaint. Any judgment as well as all the proceedings had therein from the filing of the amended complaint to its rendition are null and void and produce no legal effect.

2. JUDGMENT; DOCTRINE OF RES ADJUDICATA.—The doctrine of *res adjudicata* is predicated on a prior valid judgment. If the judgment is void for lack of jurisdiction over the subject-matter, or the parties, it cannot operate as an adjudication of the controversy. Gotamco *vs.* Chan Seng, 46 Phil. 542. The doctrine cannot be invoked to bar an action whose very purpose is to annul that judgment. Uy Almeda *vs.* Cruz, 47 Off. Gaz., 1179.

3. ID.; ID.; VOID JUDGMENT; NATURE AND EFFECT; REMEDIAL STEPS AGAINST A VOID JUDGMENT.—A void judgment remains so forever. It cannot be validated and made operative by lapse of time, or by judicial action, or by subsequent legislative enactment. 49 C. J. S. 882-883. The same may be assailed or impugned at ay time, either directly or collaterally, by a motion filed in the case where it was rendered, or by a separate action, or by resisting it in any action or proceeding wherein it is invoked. Ang *vs.* Rosillosa, G. R. No. L-3593, May 22, 1950.

4. DONATION; ACCEPTANCE MUST BE DONE DURING LIFETIME OF DONOR; ART. 633, OLD CIVIL CODE.—The validity of a donation of real property has to be determined as of the date of its execution. Under the old Civil Code, in order that a deed of donation of real property may be valid, it is absolutely necessary that it be made in a public instrument, and that the gift be accepted by the donee in the same deed of donation, or in a separate public instrument, during the lifetime of the donor. Art. 633, old Civil Code; Velasquez *vs.* Biala, 18 Phil. 213; Abellera *vs.* Balanag, 37 Phil. 865.

APPEAL from a judgment of the Court of First Instance of Rizal. Enriquez, *J.*

The facts are stated in the opinion of the Court.

Jose D. Villena, for defendants and appellants.

Lorenzo Sumulong, Rafael B. Hilao and *Emilia M. Vidanes,* for plaintiff and appellee.

NATIVIDAD, *J.:*

This is an action for the annulment of the judgment rendered in Civil Case No. 159 of the Court of First Instance of Rizal, for a declaration of the properties therein adjudicated as owned in common and pro-indiviso by the plaintiff and the defendants, and for the partition of said properties among the parties and the rendition by

the defendants of an accounting of their administration thereof.

The evidence discloses that the properties described in paragraph IV of the complaint, consisting of 5 small parcels of riceland and a residential lot with a house of mixed materials built thereon, situated in the barrios of San Joaquin and Pineda of the municipality of Pasig, province of Rizal, were originally owned as conjugal partnership property by the spouses Ventura Oliveros and Agustina Cruz who are both dead. The latter died intestate on January 11, 1911, leaving her share in the conjugal properties above referred to, and as surviving heirs her husband, Ventura Oliveros, and seven children had with the latter, named Antonina, Gregorio, Mariano, Antonia, Gabriel, Jacinto and Maria Consuelo, all surnamed Oliveros. After the death of Agustina Cruz, Ventura Oliveros continued in the administration of the properties of the conjugal partnership.

On September 29, 1934, Ventura Oliveros, without effecting a liquidation of the properties of that conjugal partnership, executed a deed donating three of the parcels of the land belonging thereto to his sons Mariano, Jacinto and Gabriel. These parcels, which are described in the deed Exhibit "C", are those located in the *sitios* of Cababaan and Ilog Bambang of the barrio of San Joaquin. The acceptance of this donation by the donees appears in the same deed of donation, but said deed was only ratified before a notary public by the donees on September 15, 1938, or after the demise of Ventura Oliveros, which took place on March 9, 1938. The deed has not been ratified before a notary public by Ventura Oliveros during his life time.

On February 25, 1938, Ventura Oliveros contracted a second marriage with Severa de los Reyes. Shortly after this marriage, Ventura Oliveros had a portion of about 400 square meters in area segregated from the residential lot situated in the barrio of Pineda and donated said portion to his second wife.

On March 9, 1938, scarcely two weeks after he had contracted marriage with Severa de los Reyes, Ventura Oliveros died also intestate, without having effected a liquidation of the properties of the conjugal partnership between him and Agustina Cruz, and leaving as heirs his surviving children Antonina, Mariano, Jacinto, Gabriel and Antonia, and the children of Gregorio and Maria Consuelo who had since died.

On March 4, 1944, Antonio Santos, surviving son of Maria Consuelo Oliveros, filed against the other surviving heirs of the deceased spouses Ventura Oliveros and Agus-

tina Cruz an action for the partition among them of the estates of the said deceased. This case was docketed as Civil Case No. 86 of the Court of First Instance of Rizal. Its record, however, was destroyed as a result of the military operations for the liberation of the country from the Japanese forces, and the parties failed to have it reconstituted.

On March 5, 1947, Antonio Santos again filed against his co-heirs a new action for the partition of the estates of said deceased spouses, and this action was docketed as Civil Case No. 159 of the Court of First Instance of Rizal. Summons were issued in the case and they were duly served on all of the defendants, except Dionisio Oliveros. Defendants Antonina, Antonia and Perpetua Oliveros, and Severa de los Reyes were served with summons, but they failed to file their answers. Only Mariano, Gabriel and Jacinto Oliveros filed their answers. Upon motion, Antonina, Antonia and Perpetua Oliveros and Severa de los Reyes were declared in default, and the trial of the case proceeded.

On June 4, 1948, before the termination of the hearing on Civil Case No. 159, plaintiff Antonio Santos filed therein an amended complaint, in which he incorporated an additional allegation to the effect that three of the defendants, namely, Mariano, Gabriel and Jacinto Oliveros, had taken possession of the estates in question to the exclusion of all the other heirs, and prayed that the latter be required to render an accounting of their administration thereof. Copies of this amended complaint and of the motion for the admission thereof were duly served on the counsel for defendants Mariano, Gabriel and Jacinto Oliveros; but the other defendants were not served with copies of said pleadings. This notwithstanding, said amended complaint was admitted by the Court.

On May 25, 1950, plaintiff Antonio Santos and defendants Mariano, Gabriel and Jacinto Oliveros submitted in the case a paper entitled "Stipulation of Facts and Agreement of Partition" in which said parties, after narrating the necessary jurisdictional facts and setting forth the names of the heirs surviving the deceased Ventura Oliveros and Agustina Cruz, excluded from the estates of said deceased the three parcels of riceland in the barrio of San Joaquin which was the subject-matter of the alleged donation of September 29, 1934, and the portion of 400 square meters of the residential lot in Pineda which was ceded by Ventura Oliveros to his second wife Severa de los Reyes shortly after they were married, and asked that the remaining three parcels of land, or the remaining portion of the residential lot in Pineda and the two other

parcels of riceland in San Joaquin, be divided among and adjudicated to the heirs therein named as follows:

"in favor of plaintiff Antonio Santos that parcel of land situated in barrio San Joaquin, municipality of Pasig, province of Rizal, and more particularly described under Item 6 of paragraph 3 of the amended complaint; and which is mentioned and described in item (a) of paragraph seven (7) hereof; and the rest of the properties to be partitioned as stated in items (b) and (c) of paragraph 7 hereof, should therefore be divided into five (5) equal parts 1/5 for Antonia Oliveros; 1/5 for Mariano Oliveros; 1/5 for Antonina Oliveros; 1/5 for Gabriel Oliveros; and 1/5 for Jacinto Oliveros, share and share alike."

and that said stipulation and agreement of partition be approved and the case decided in accordance therewith. On June 1, 1950, the Court rendered in the case judgment in accordance with the terms and conditions embodied in said stipulation and agreement of partition.

Having learned of the judgment above referred to on June 19, 1950, Antonina Oliveros filed in the case a motion for a reconsideration thereof and to reopen the case, on the ground of fraud and excusable mistake or negligence. This motion was denied. Hence, on April 11, 1953, she commenced this action.

It further appears that since the death of Ventura Oliveros in 1938 up to the present the properties belonging to the estates of Ventura Oliveros and Agustina Cruz has been under the administration of Mariano and Jacinto Oliveros, and lately, after the latter's demise, of defendant Gabriel Oliveros; that the house and lot in Pineda was rented for ₱24.00 a month, or ₱288.00 a year; that the five small parcels of riceland in San Joaquin had a total yearly yield of 200 cavans of palay, which cost around ₱4.00 per cavan in the years preceding the Pacific War and around ₱12.00 a cavan after the liberation of the Philippines, and that the other heirs of said deceased spouses, except Antonio Santos who took possession of one of the small parcels of riceland in San Joaquin in the month of June 1950, have not received their share in the fruits of said properties.

Upon the above facts, the trial court rendered judgment, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered (1) declaring the decision of June 1, 1950 in Civil Case No. 159 as null and void and without force and effect, with costs *de oficio;* (2) declaring that the seven items of real properties described in paragraph 3 of the amended complaint in Civil Case No. 159 are conjugal properties of the deceased spouses Ventura Oliveros and Agustina Cruz; (3) ordering the partition of the six (6) parcels of land and house mentioned in No. (2) among plaintiff and defendants within two months into six equal shares, as follows: one part each to Antonina Oliveros, Antonia Oliveros, and Gabriel Oliveros; one part to

Dionisio Oliveros, Perfecto Oliveros, Herminia Oliveros, Rufino Oliveros, Marcelina Oliveros, Fortunato Oliveros, Adoracion Oliveros, and Corazon Oliveros; one part to Antonio Santos; and one part to Leonila Oliveros, Florencio Oliveros, Felicidad Oliveros, Renato Oliveros, Nieves Oliveros, Bernardo Oliveros, and Jacinto Oliveros, after deducting from item 1 the 400 square meters for Severa de los Reyes; and (4) ordering the defendants Gabriel Oliveros, Antonio Santos, Leonila, Florencio, Felicidad, Renato, Nieves, Bernardo and Jacinto Oliveros to render an accounting of the produce, rental, and yield of the lands received during their administration within thirty (30) days.

"IT IS SO ORDERED."

From this judgment, the defendants appealed on the ground that—

"I. The trial court erred in declaring as null and void and without force and effect the decision of June 1, 1950 in Civil Case No. 159 of the Court of First Instance of Rizal.

"II. The trial court erred in finding that the court in Civil Case No. 159 did not acquire jurisdiction over the person of Antonina Oliveros, a defaulting defendant in said case, in relation to the amended complaint.

"III. The trial court erred in stating that the court in Civil Case No. 159 had no jurisdiction to approve and confirm the stipulation of facts submitted in the said case.

"IV. The trial court erred in finding that the Court in Civil Case No. 159 acted without juridiction in rendering its decision of June 1, 1950.

"V. The trial court erred in not declaring that the decision of June 1, 1950, Exhibit B-8, constitutes *res adjudicata* in the present case and is a bar to the presentation of the present action by Antonina Oliveros in Civil Case No. 2057.

"VI. The trial court erred in not declaring that Antonina Oliveros and those defendants joining cause with her had incurred in laches in allowing six (6) years to lapse from the time were in default and three (3) years after the decision of June 1, 1950 had already become final, in not seeking relief earlier under Rule 38 of the Rules of Court and in not appealing from said decision.

"VII. The trial court erred in not declaring that the three (3) parcels of land which Ventura Oliveros donated in Exhibit C to Mariano, Gabriel and Jacinto Oliveros had become the absolute properties of the latter; and in not declaring that the action of Antonina Oliveros relative thereto had already prescribed.

"VIII. The trial court erred in ordering that partition of all the properties and in not excluding therefrom the three (3) parcels of land ceded to Mariano, Gabriel and Jacinto Oliveros in the same way that the donation to Severa de los Reyes of 400 square meters of land had been recognized and respected.

"IX. The trial court erred in ordering the rendition of accounts of the products and fruits of the properties on the part of Gabriel Oliveros and other defendants.

"X. The trial court erred in not dismissing the present action interposed by Antonina Oliveros."

Appellants contend under their first, second, third and fourth assignments of error that, as the plaintiff in this case, Antonina Oliveros, was one of the parties defendants in Civil Case No. 159 of the Court of First Instance

of Rizal, in which Antonio Santos, one of the defendants herein, was the plaintiff, and she was duly served with summons issued in that case but failed to appear therein, the trial court acquired jurisdiction over her person, the fact that she was not served with copy of the amended complaint therein filed, or served with notice of the order admitting the same, and was not a party to the stipulation of facts and agreement for partition upon which the judgment rendered in that case was based notwithstanding. Consequently, it is argued, the trial court erred in declaring the judgment rendered in that case on June 1, 1950, null and void as rendered without jurisdiction. In support of this view, appellants invoke Rule 35, Section 7, of the Rules of Court which provides that "when a complaint states a common cause of action against several defendants, some of whom answer, and the others make default, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented by the parties in court", and the jurisprudence on the subject which holds that the judgment rendered under the circumstances above adverted to, if adverse, will prejudice both the defaulting defendants and those who answered, and, if favorable, will benefit both, Castro *vs.* Peña, 80 Phil., 488; that a defendant who fails to answer the complaint within the time provided by the Rules of Court is already in default, Duran *vs.* Arboleda, 20 Phil., 253, and loses his standing or is considered out of court, and is not entitled to notice of the further proceedings in the case, or to be heard, except to file a motion to set aside the order of default on the grounds stated in Rule 38 of the Rules of Court. Lim Toco *vs.* Go Fay, 80 Phil., 166.

We do not share appellants' view. The doctrines invoked by them are good law, but they are not controlling in the instant case. It is true that plaintiff herein was, as defendant in Civil Case No. 159, duly served with notice of the summons issued in that case and that she failed to answer the original complaint therein filed, and, consequently, she may be regarded as already in default in so far as that complaint is concerned. But Civil Case No. 159 was not heard and decided on plaintiff's original complaint but on the amended complaint filed therein, and it is admitted that the plaintiff herein, who did not appear in that action, was not served with the summons and copy of said amended complaint in the manner provided by the Rules of Court.

In the case of Atkins, Kroll and Co. vs. Domingo, 44 Phil., 680, the Supreme Court held:

"* * * If the defendant had appeared in the action, service of the amended complaint upon him in the manner and form stated

would have been sufficient. But the defendant never did appear in the action until he filed his motion to set aside and vacate the judgment. For such reason, the service of the amended complaint upon his sixteen-year-old son by the attorney for the plaintiff was not sufficient to give the court jurisdiction over the defendant as to any new matter alleged in the amended complaint. Under the facts shown here, the amended complaint and summons should have been served upon the defendant with the same formalities as the original complaint and summons. Hence, the service of the amended complaint made by the attorney for the plaintiff is not valid and did not give the court jurisdiction to render judgment upon the amended complaint."

The claim that the above doctrine is not the law now because of the provisions of Section 7, Rule 35, of the Rules of Court, which is a new provision, does not impress us. We find there is no conflict between said doctrine and the doctrine of Section 7 of Rule 35. The Supreme Court has incorporated said section into the Rules of Court precisely to confirm the previous rulings on the subject, evidently including the above-quoted doctrine, as may be gleaned from a later decision of that Court in which it held that because of the failure of the plaintiff to serve on the defendant copy of the document which he later on incorporated to the complaint, the order declaring the latter in default was unjustified, and the proceeding had in the case since the incorporation of said document to the issuance of the writ of execution was null and void. Villegas *vs.* Roldan, G. R. No. L–306, March 26, 1956.

We, therefore, find that the trial court did not commit error in holding that the court did not acquire jurisdiction in Civil Case No. 159 to render the judgment above referred to, and that said judgment, as well as all proceedings had in that case from the filing of the amended complaint to its rendition, are null and void and produced no legal effect.

In view of the above conclusion, it goes without saying that appellants' claim under their fifth and sixth assignments of error that the trial court erred in not declaring that the judgment rendered in Civil Case No. 159 constitutes *res adjudicata* in the present case and that appellee's claim is barred by laches, are without merits. The doctrine of *res adjudicata* is predicated on a prior valid judgment. If the judgment is void for lack of jurisdiction over the subject-matter, or the parties, it cannot operate as an adjudication of the controversy. Gotanco *vs.* Chan Seng, 6 Phil., 542. The doctrine cannot be invoked to bar an action whose very purpose, like the present, is to annul that judgment. Uy Almeda vs. Cruz, 47 Off. Gaz., 1179. And it is the rule that a void judgment remains so forever. It cannot be validated and made operative by lapse of time, or by judicial action or by subsequent legislative enactment. 49 C. J.

S., 882–883. The same may be assailed or impugned at any time, either directly or collaterally, by a motion filed in the case where it was rendered, or by a separate action, or by resisting it in any action or proceeding wherein it is invoked. Ang *vs.* Rosillosa, G. R. No. L–3593, May 22, 1950.

The above discussions dispose of the procedural questions raised. We now go to the merits of the case. Appellants argue under the seventh, eighth, ninth and tenth assignments of error that the trial court erred in ordering the partition among the parties of all the properties belonging to the estates of the deceased Ventura Oliveros and Agustina Cruz; that the three parcels of riceland described in the deed Exhibit "C" should have been excluded from such partition and declared the exclusive property of Mariano, Gabriel and Jacinto Oliveros, and that it was illegal to require Gabriel Oliveros and the other defendants to render an accounting of their administration thereof. It is claimed that, as those three parcels of land were, by a deed executed on September 29, 1934, donated by the deceased Ventura Oliveros to Mariano, Gabriel and Jacinto Oliveros and the latter's acceptance of the donation appeared in that same deed, the latter had become absolute owners of said parcels of land and lawful possessors thereof since that date. Hence, whatever rights the plaintiff may have relative to them had already prescribed, for, granting that the donation was ineffective, nevertheless possession under the same may serve as basis for acquisitive prescription.

Again, we do not share appellant's view. The validity of a donation of real property has to be determined as of the date of its execution. The donation at bar was allegedly made on September 29, 1934. Under the law then in force, in order that a deed of donation of real property may be valid, it is absolutely necessary that it be made in a public instrument, and that the gift be accepted by the donee in the same deed of donation, or in a separate public instrument, during the lifetime of the donor. Art. 633, old Civil Code; Velasquez vs. Biala, 18 Phil., 213; Abellera *vs.* Balanag, 37 Phil., 865. A careful reading of the alleged deed of donation, Exhibit "C", discloses that while it contains specific descriptions of the three parcels of land therein referred to and an acceptance clause, and it appears that it was duly signed on September 29, 1934, by Buenaventura (Ventura) Oliveros, the alleged donor, and the alleged donees Jacinto, Mariano and Gabriel Oliveros in the presence of two witnesses, nevertheless the said deed was not a public instrument. It was never acknowledged by Buenaventura (Ventura) Oliveros before a notary public before his death on March

9, 1938. The same was only acknowledged before a notary public by Jacinto, Mariano and Gabriel Oliveros on September 15, 1938, or six months after the demise of Ventura Oliveros. Whatever effect this belated acknowledgment produced, whether it converted the document into a public document or not, it is beyond question that at the time of its execution it was not a public document. The donation therein recorded was therefore ineffective for failure to comply with the requisites prescribed by law. Moreover, even granting that the ratification by the donees of said deed before a notary public on September 15, 1938, converted that document into a public deed, nevertheless such conversion did not convalidate the acceptance of the donation. The acceptance by the donee of a donation in order to produce valid effect must be made during the lifetime of the donor. So much may also be said as to the claim that the donation was convalidated by the alleged acknowledgment thereof in a document dated October 27, 1943, by the widow of Ventura Oliveros and by her daughter Antonina Oliveros and grand-daughter Perfecta Oliveros. Voidable contracts can only be convalidated, or defects therein corrected, by the immediate parties thereto.

Without, therefore, indulging in further discussion of the question of whether or not Ventura Oliveros, as mere administrator of the unliquidated assets of the conjugal partnership between him and his deceased wife, could validly donate specific units of said assets, and whether or not the donation at bar is inofficious as encroaching upon the legitime of the forced heirs, which is unnecessary for purposes of this opinion, we hold that upon the facts the donation at bar is null and void and produced no legal effect.

Appellants however, claim that as since September 29, 1934, until this action was filed on April 11, 1953, or for over 18 years, defendants have been, personally and thru their successors in interest, in peaceful, continuous, public and adverse possession of the three parcels of land in question, they have already acquired ownership of the same thru prescription, for possession under a defective donation may serve as the basis for acquisitive prescription, particularly when, as in the present case, some of the parties interested have confirmed the donation in a public deed. Exhibit "11".

The contention is untenable. It is not disputed that no liquidation of the properties belonging to the conjugal partnership of the spouses Ventura Oliveros and Agustina Cruz was ever made by the surviving husband Ventura Oliveros, and that since the death of the latter up to the present said properties have been administered by his

sons Mariano, Gabriel and Jacinto Oliveros; and that the latter have not rendered an accounting of their administration thereof. There is no showing, however, that any one of the heirs of said deceased spouses had ever demanded an accounting of their administration and the delivery to them of their share in the fruits of said properties and that this demand was refused. Upon the facts, therefore, it can not be held that the possession by Mariano, Gabriel and Jacinto Oliveros of the estates of the spouses Ventura Oliveros and Agustina Cruz, deceased, including the three parcels which they claimed were donated to them, was such possession under claim of ownership and adverse to the claims of their other co-heirs as to be sufficient basis for title by prescription. It is well-settled rule that possession of a trustee for his co-heirs is possession of the latter, and that the former cannot claim adverse possession against the latter in the absence of clear, complete and conclusive evidence that his repudiation of such relationship was brought home to the other co-heirs. Bargayo *vs.* Camumot, 40 Phil., 857; De Borja *vs.* De Borja, 59 Phil., 19; Cortes *vs.* Oliva, 33 Phil,, 480; Laguna vs. Levantino, 71 Phil., 566.

In Cortes *vs.* Oliva, *supra,* the Court held:

"Ordinarily possession by one joint owner will not be presumed to be adverse to the others, but will, as a rule, be held to be for the benefit of all. Much stronger evidence is required to show an adverse holding by one of several joint owners than by a stranger; and in such cases, to sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run."

And in Laguna *vs.* Levantino, *supra,* the Court said:

"It is a well-settled rule that possession of a trustee is, in law, possession of the *cestui que trust* and, therefore, it cannot be a good ground for title by prescription. The only instance in which the possession of a trustee may be deemed adverse to the *cestui que trust* is when the former makes an open repudiation of the trust by unequivocal acts made known to the latter. It has been held that the trustee may claim title by prescription founded on adverse possession, where it appears (a) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust;* (b) that such positive acts of repudiation have been made known to the *cestui que trust;* and (c) that the evidence thereon should be clear and conclusive. Acts which may be adverse to strangers may not be sufficiently adverse to the *cestui que trust.* A mere silent possession of the trustee unaccompanied with acts amounting to an ouster of the *cestui que trust* cannot be construed as an adverse possession. Mere perception of rents and profits by the trustee, and erecting fences and buildings adapted for the cultivation of the land held in trust, are not equivalent to unequivocal acts of ouster of the *cestui que trust.* (Cortes *vs.* Oliva, 33 Phil., 480; Bargayo *vs.* Camumot, 40 Phil., 857; Espeidel *vs.* Henrici, 120 U.S. 377). In the instant case, the sole fact of B's

having declared the lands in his name for tax purposes, constitutes no such unequivocal act of repudiation amounting to an ouster of his father, J. L., and cannot thus constitute adverse possession as basis for title by prescription."

It is, however, claimed that the possession of the three parcels of land in question by the brothers Mariano, Gabriel and Jacinto Oliveros may be considered as under claim of ownership and adverse against plaintiff Antonina Oliveros, for in a document dated October 27, 1943, Exhibit "11", the latter acknowledged the fact of the donation of said parcels of land to said brothers.

The claim is untenable. The document Exhibit "11" is of doubtful validity and cannot be accorded any probative value. The evidence shows that Antonina Oliveros was an ignorant woman; that she did not know how to read or write; that said document was not read to her before she signed it; that she understood that what she was signing had something to do with the complaint filed by Antonio Santos against her and others; and that on that occasion no mention whatsoever was made of a donation made by her father in the year 1934 in favor of her brothers Mariano, Gabriel and Jacinto Oliveros. Antonina Oliveros, therefore, must have signed the document Exhibit "11" in complete ignorance of its contents and believing it to be something needed for her defense in the case filed by Antonio Santos against her and others, and that it had nothing to do with the alleged donation. Under such circumstances, the document is null and void in law.

"If a person is ignorant of the contents of a written instrument and signs it under a mistaken belief, induced by misrepresentation that it is an instrument of a different character, without negligence on his part, the agreement is void." 12 Am. Jur. 637–638.

Appellants' claim that the trial court erred in ordering Gabriel Oliveros and other defendants to render an accounting of their administration of the properties in question is likewise unfounded. That defendants Mariano, Jacinto and Gabriel Oliveros have been in possession of the properties in question since the death of Ventura Oliveros in 1938 up to the present cannot be disputed. The findings made by the trial court, in its carefully prepared opinion, to the effect that—

"* * * after the death of Ventura Oliveros in 1938, Jacinto collected the rentals of houses erected on the residential lot (Item 1) in barrio Pineda, amounting to ₱24 a month or ₱288 yearly; that after the death of Jacinto, Gabriel took over the collection of the rentals; that since 1938, Mariano administered the five parcels of riceland in barrio San Joaquin, denominated as items 3 to 7; that after the death of Mariano, Gabriel also succeeded to the administration; that the harvest from the rice-lands was 200 cavanes of palay yearly, the price thereof per cavan during the prewar days being ₱4.00 to ₱5.00, and around ₱12 after liberation; that the other heirs were not given any participation in

the rentals and produce except Antonio Santos who took possession of item No. 6, as per decision of June 1, 1950, based on his agreement with his uncles Mariano, Gabriel, and Jacinto Oliveros."

is fully supported by the evidence. As said properties are owned in common by the parties to this action, who, under the law are entitled to the fruits and benefits thereof, and the appellee has not received her share in said fruits and benefits during the period above referred to, her right to demand an accounting of their administration of said properties and to recover her share in their fruits cannot be questioned. This accounting and recovery may be had in an action for partition. Rule 71, Section 8, Rules of Court.

WHEREFORE, we find that the judgment appealed from is fully supported by the evidence and in accordance with law. The same, consequently, is hereby affirmed with costs.

IT IS SO ORDERED.

Sanchez and *Angeles, JJ.*, concur.

Judgment affirmed.